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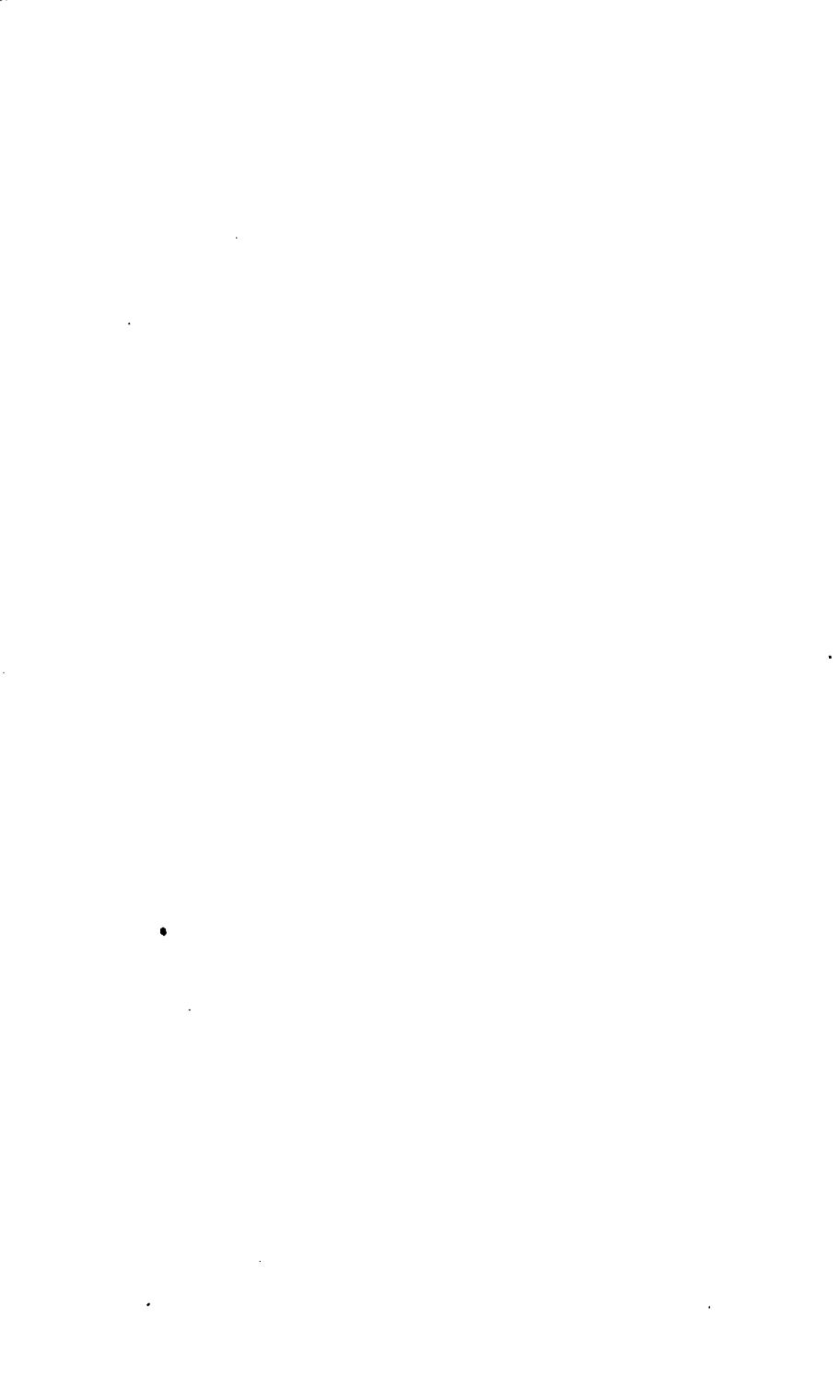
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**LETTER**

**TO**

**VISCOUNT SIDMOUTH,**

**&c. &c.**





# LETTER

TO

VISCOUNT SIDMOUTH,

SECRETARY OF STATE FOR THE HOME DEPARTMENT,

ON THE

Transportation Laws,

THE

STATE OF THE HULKS, AND OF THE COLONIES

IN

NEW SOUTH WALES.

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BY THE

HON. HENRY GREY BENNET, M. P.

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LONDON:

PRINTED FOR J. RIDGWAY, 170, PICCADILLY.

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1819.



J. Arliss, Printer, 38, Newgate Street, London.

# LETTER,

&c. &c.



*Walton upon Thames, December 27, 1818.*

MY LORD,

THE situation which your lordship occupies in the government of the country, entitles me to expect that the subjects, which I take the liberty of bringing before your view, have not wholly escaped your notice.

It must be evident to every one who examines into the general questions of public police, and the administration of our penal laws, that however important they are and have been to the best domestic interests of the country, no subjects in the long list of official mismanagement, furnish so many examples of ignorance, inattention, and misrule.

It would seem that those personages who have successively filled the office of Home Secretary of State, entertained no other notion of their duties, than to take care that a sufficient number of criminals should annually suffer death, or be confined

in our prisons, in the hulks, or sent to Botany Bay. No thought seems ever to have been given to the fate of those, whom the mercy of the crown spared from the hands of the executioner. No care has been practically taken to reform the criminal, to correct the vicious habits of the dissolute, or to make the idle and profligate sober and industrious;—to get rid of the miserable objects of legal punishment constituted the sole occupation of these administrators of our penal law; and when the grave closed on some, and the distance of half the globe prevented the cries of others of the victims we banished from our shores from being heard in England, these artificers of death, moral and physical, were satisfied that the law had taken its course—justice done upon offenders—and life and property secured at home by the waste of both abroad.

A national penitentiary establishment has been at length formed; though the experiment has been wasteful and costly—though probably three times the money requisite to attain all the objects sought for will be expended—though some of the arrangements may be erroneous, yet the principle of this reformatory system is so sound and salutary, and has already afforded so much relief to misery, as fully to compensate for the customary extravagance with which it has been carried into effect.

The rules and arrangements of the establishment at Millbank have been so ably explained and com-

mented upon in the excellent book of Mr. Buxton on Prison Discipline; as to make it unnecessary for me to enter into a detail of them. I shall therefore merely state what the objects sought for are, and the means used to attain them, in order to contrast the system here with that which exists elsewhere. They are then two-fold. 1st. By the construction of a place of punishment, where, by personal imprisonment and compulsory labour, the criminal may feel the consequences of violating the laws of his country. 2dly. As a place of reformation, in which habits of industry may be acquired by the idle; knowledge by the ignorant; and temperance by the dissolute; so that the final result may be the transformation of the criminal convict—the victim to debauchery and prostitution—the helpless and abandoned infant—the child of penury and guilt, into honest, rational, industrious human beings.

In this prison there are no whips—there are no chains—no exposure—no torture by famine, or cold, or overcrowding; and those spirits which the penalties of the law could not intimidate, nor punishment bend, are broken by the kindness which has gained their confidence, and the gentleness which has won their affections.

If there be any one who yet hesitates between the old system and the new, let him contrast the condition, moral and physical, of the inmates of this prison, with what they were when they first

entered its walls ; his heart must be hard indeed who can witness, unmoved, the reception which that excellent person, the Chaplain of this benevolent institution meets with, when he passes from cell to cell, or who could wish to exchange the comparative contentment and comfort, for the haggard look of despair, disease, and want, which are but too common in our ordinary prisons ; he who is not already convinced that the guilty and hardened may be softened and reformed, let him visit this prison.

This institution, then, is good ; why then limit this great blessing ? Why not extend the reformatory prison system throughout the kingdom ? Why stop at Milbank ? What is there to prevent the principle and enactment of the 19th of Geo. III. being carried into execution ; that principle is best known by the 5th clause of the act,—“ Whereas if many offenders convicted of crimes, for which transportation hath been usually inflicted, were ordered to solitary imprisonment accompanied by well-regulated labour and religious instruction, it might be the means under Providence, not only of deterring others from the commission of the like crimes, but also of reforming individuals, and inuring them to habits of industry ;—be it therefore enacted.” This act was drawn by the late Sir William Blackstone, assisted by the advice of the philanthropic Mr. Howard. It had two principal objects.—1st, The reformation of criminal convicts,

making punishment salutary to the individual, no less than exemplary to the public. 2dly, The limitation of, if not the putting a stop to, the system of transportation of offenders to the colonies of North America, which was considered by these eminent persons as improvident and unjust. The views indeed of Sir William Blackstone went much further; for while he contemplated the benefits to be derived by checking this waste of punishment, by giving to the judges the power of commuting banishment for imprisonment, he declares that, "in forming the plan of these penitentiary houses; the principal objects have been, by sobriety, cleanliness, and medical assistance—by a regular series of labour—by solitary confinement during the intervals of work, and by due religious instruction to preserve and amend the health of the unhappy offenders—to inure them to habits of industry—to guard them from pernicious company—to accustom them to serious reflection, and to teach them both the principles and practice of every christian and moral duty; and if the whole of this plan be properly executed, and its defects be timely supplied, there is reason to hope that such a reformation may be effected in the lower classes of mankind, and such a gradual scale of punishment be affixed to all gradations of guilt, as may, in time, supersede the necessity of capital punishment, except for very atrocious crimes.(a)

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(a) Vide Blackstone, vol. 4, p. 371.



This act was passed 36 years ago, and has remained from that time to this nearly a dead letter. True it is, that in some goals in the country, such as at Gloucester, Southwell, and in a few other places, successful attempts have been made to establish houses of correction, in which, by the proper classification and employment of prisoners, they might be discharged at the conclusion of their respective terms of imprisonment, improved in morals and habits, and to some extent reformed; but the general mass of these places of confinement are calculated, from the deficiency of all rational management, there being, generally, neither work nor instruction, to augment in a frightful ratio, and to spread far and wide the vices and crimes they were constructed to cure. (b)

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(b) Mr. Buxton has mentioned the goals at Kingston, Guildford, St. Albans, and Bristol, as being in the most discreditable condition; to this list I wish to add the town goal of Coventry, where the wretched prisoners are shut up at night in a dungeon underground, to which you descend by many steps. No attempt is made at classification; but the young and the old, the tried and untried, are all confined together. The men too can have access to the female prisoners, and not long ago a person was tried for a rape on a female prisoner while they were in goal together. To the honour of the country, there are few places as bad as the above mentioned prisons, but there are very few in which the prisoner is not rendered worse by confinement, and I never met with but one keeper, who did not openly acknowledge that fact. In a recent publication, entitled a report of the Bedfordshire Goal Committee of magis-

In 1792, one year previous to the revolution war, when our domestic concerns occupied some small portion of the attention of our government, a proposal was made by Mr. Bentham to construct a penitentiary house;—that extraordinary and highly gifted person gave in a plan, which is too well known to require being again described; it is enough to say, that it was ingenious, original, and well adapted to perform all that the projector engaged to do. It might have faults in the detail, but the principle was excellent, and was so consi-

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trates, drawn up with great care and precision by that zealous and intelligent magistrate, the Rev. Dr. Hunt, and printed by order of session, 1818, it is fairly stated, "that from the present defective discipline of the prison, and the want of separation and proper classification among the offenders, the administration of the criminal law has, so far as regards minor offences, notoriously contributed to increase rather than to diminish delinquency throughout the country, by its tendency to corrupt rather than to reform juvenile offenders who are sent to the House of Correction." In some places magistrates prefer letting the young offender escape punishment altogether, rather than commit him to prison, or to the house of correction. I this summer personally interfered and succeeded in saving two boys, who were about to be committed to the Kingston House of Correction for robbing a garden, by representing to the humane and rational prosecutor, that a confinement in that place, instead of deterring the offenders from the perpetration of crimes, would, in all probability, transform these stealers of a few apples into confirmed and hardened thieves.

dered by the government, for it was by them adopted.

In a short time, however, impediments were thrown in the way of the execution of this plan, and the whole scheme was at last entirely abandoned. Mr. Bentham complained loudly, and I think his complaints were well founded at this breach of stipulated engagements; but whatever injuries he sustained, the country sustained more; and if, in 1792, the system which he proposed had been carried into effect, not only would the greater part of the money have been saved which has been expended in the foundation of a settlement of felons on the other side of the globe, but the operation of rational punishment, connected with real reformation, would have contributed to check that inundation of crime, which has flowed in from all quarters, and which at the moment while I write is, I believe, unparalleled in any age or country. (c)

In order to remove any doubts which may exist as to the utter inefficacy of the present system of punishments, I beg your attention to the following facts:—1st. As to the number of persons who have been transported since the settlement of felons at Botany Bay was planted. From May 1787 to

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(c) At the last September sessions 473 prisoners were for trial in Newgate, one fourth of whom were women, and one fourth for capital offences; of the 373 male prisoners, one seventh had been there before, and 12 of them had been transported.

1797—5958 convicts of both sexes were settled; and from that period to 1810, 3247 males and 1231 females were transported there. From July, 1810, to August, 1811, 400 males and 99 females; and from January, 1812, to January, 1817, 3978 males and 681 females;—total 4659. It thus appears, from the different returns that have been published by order of the House of Commons, or which are to be found in the report of Parliamentary Committees, that during a period of thirty years, no less than 16,794 have been sent to Botany Bay; to this number may be added the convicts, who before the Union, were transported from Ireland, so that in round numbers I may safely assert, that not less than 17,000 persons have been banished from their native country since 1787, being at the rate of somewhat more than 560 per annum.

I possess no means of ascertaining the exact numerical proportion which the different sexes bore to each other during the early operation of this system; but from 1797 to April, 1815, 5546 males and 1799 females; being in the ratio of somewhat more than three to one were sent to Botany Bay. From returns to the House of Commons, it also appears that between the months of July, 1810, and January, 1817, 2340 persons were transported for life—838 for 14 years, and 2048 for seven years: of the whole number, about 828 were women, of these 189 were for life, 107 for fourteen years, and 532 for 7 years.

I am not able to find in these returns any account of the ages under twenty-one years of the convicts prior to January, 1812; but from that period to January, 1817, 780 males and 136 female convicts were transported under that age, of whom 5 were infants of 11,—7 of 12,—17 of 13,—32 of 14, and 65 of 15 years of age. To this must be added a document which I moved for last session, by which it will be seen, that from the 1st of January, 1816, to the 1st of the same month, 1817, 482 males and 66 females; and from January, 1817, to January, 1818, 891 males and 55 females were sent to Botany Bay for 7 years: in the last period 234 were under 20—1 was of 11—and 3 were above 60 years of age.

No return can be produced, because I understand none has been made to the Home Office, of the number of persons committed to prison and convicted prior to 1805; the amount is shewn in the following table of the number of those who were convicted and sentenced to death and transportation for various terms, from 1805 to 1817 inclusive:—

In the years . . .	1805	1806	1807	1808	1809	1810	1811	1812	1813	1814	1815	1816	1817
Convicted and sentenced to Death	350	325	343	338	392	476	404	532	713	558	553	890	1302
Transportation for life . . . . .	.....	.....	.....	3	7	12	29	25	50	53	38	60	103
—14 years . . . . .	34	26	46	37	50	31	34	67	95	78	94	133	157
—7 years . . . . .	561	496	500	467	581	526	500	586	622	625	826	861	1474
Convicted . . . . .	945	847	889	845	1030	1045	967	1212	1480	1314	1511	1944	3036
Of whom were executed . . . . .	68	57	63	39	60	67	45	82	120	70	57	95	1514

(2) The executions do not at present bear the same merciless proportion to the convictions which disgraced the administrators of our penal laws in the middle of the last century. In the tables of the Old Bailey Sessions, preserved by Theodore Jausan, it appears, that from 1749 to 1771, both inclusive, 1121 were sentenced to death, of whom 678 suffered.

This then is the best account which I have been able to procure of the extent to which this system is carried into effect. The next head of enquiry respects the number of persons who are confined in the hulks, under sentence of transportation. Without having access to official documents, I have no means of ascertaining the number of persons who pass the whole or a portion of their sentence on board the hulks, or remain there only for the period, be it long or short, between their respective sentences and their embarkation for Botany Bay. In 1797, 1402 persons were confined on board the hulks at Portsmouth, Langstown Harbour, and at Woolwich, and from 1804 to 1811 the average number may be taken at about 1715.

This system of confining criminals on board the hulks was first carried into effect during the American war, when the disputes between us and our colonies had interrupted the transportation of offenders to North America ; from that period to the 1st June, 1792, imprisonment on board the hulks, and the employment by hard labour, formed a part of the sentence delivered by the judge, and was a specific punishment assigned to a specific crime ; but this part of the old statute was suffered to expire. The mode of confinement now in use, is considered at present to be but temporary, and the crown has the power of putting the full sentence in force, and transporting the offender at any period of his imprisonment, to work out the remainder of his

time at Botany Bay. This power is given by 24 Geo. III., which empowers the King to direct the removal "from any goal or prison of any male offender under sentence of death, but reprieved during pleasure, or under sentence or order of transportation, to such places of confinement within England or Wales, either at land or on board any ship or vessel in any port or river his Majesty may think fit to appoint, the prisoners are to be put to hard labour, and clothed and fed." Various enactments have been successively made for the better management of these establishments, and by the last act in 1816, the whole is embodied into one system, and is (as far as it is capable of being) well regulated.

Your Lordship is well aware of the merits of Mr. Capper, who has the general superintendence over these places of confinement, it would therefore be presumptuous in me to become his panegyrist. Having, however, visited all these establishments, it is my duty to say that no one can engage in that painful task, without finding at every step something to praise in the good sense, humanity, and attention of that valuable public servant; the faults that are to be found there are not his, they belong to the system, and are traceable to causes over which he has no controul.

In the year 1817, 103 persons were sentenced to transportation for life, 157 for 14 years, and 1474 for 7 years, in all 1734—this is the greatest number ever known in the administration of criminal justice



in this country, and no doubt proceeded from the penury and wretchedness into which the people had fallen.

To this list must be added those who were sentenced to death, and which sentence was commuted to perpetual banishment; in the same period that number amounted to 1302, of whom 115 were executed, being in the proportion of 1 in 11; the whole number of persons who thus passed through the hulks, a small allowance being made for those who were pardoned, or who were left to work out a term of their sentence in the different gaols, amounts to 2921 persons. Let us pause for a moment here, and look back to the state of the country some few years; the number of individuals who were thus sentenced to the severest punishment short of death authorised by law, amounts to more than were convicted of all manner of offences, misdemeanors included, in the year 1805.

In that year, 1805.

In 1817.

Convicted and sentenced to death	350	1302
Transportation for life - -	0	103
----- for 14 years -	34	157
----- for 7 years -	561	1474
Imprisonment for various terms	1681	5700
Whipping and fine -	158	320
	<hr/>	<hr/>
	2784	9056
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It is curious to remark the commencement of this rapid increase of crime. It began precisely at the period when the calamities of war were first felt by the people of this country. No one who took any share in the public discussions of those times can forget the memorable year of 1812. I am sure the commercial and manufacturing part of this country can never forget the Order of Council, the stoppage of almost all branches of trade, the interruption of our friendly intercourse with the United States, and all the hostile measures adopted by his Majesty's government, which, whatever effect they had abroad, produced misery and distress at home. In 1811 the whole number of convicted criminals amounted to 3158—in 1812 to 3913, being an increase of nearly one third. In the six years ending in 1812, that year inclusive, the average number of convicts was 2894, from 1812 to 1817, inclusive, it was 5346, being somewhat less than double.

This calculation is made upon the whole amount of offences upon which convictions took place. Observe how it bears on the present enquiry. The average sentences of transportation for the first of these periods, including the commutation for the forfeiture of life, amounted to 920, in the second period to 1658; in the first the progress was in the proportion of 3 to 2, in the second as nearly to 2 to 1. I trust we shall never witness again such a calendar of crimes, but we may safely take the

average of the last six years, amounting to 1658, as the probable number of persons who will for some time to come suffer the sentence of transportation. The question now is, what becomes of them after conviction?

There are at present three establishments called hulks. One at Portsmouth, where there are two ships, the Leviathan and the Laurel; another at Woolwich, the Justitia; and a third at Sheerness, the Bellerophon and Retribution.

The Laurel and Justitia are not constructed on the improved plan, recommended by the Committee of the House of Commons, and contained in their report of 1812, but these ships are much improved in management and arrangement of late years. To these different establishments the convicts from all parts of the kingdom are sent; the length of time they remain in their respective prisons after sentence, and before their removal to the hulks, varies in different places and at different times. At present none of the flagrant abuses which used to exist upon this subject are likely again to recur, as a great anxiety is manifested by the gaolers and magistrates to get rid of the prisoners after conviction, and I believe no greater delay has recently occurred than perhaps is absolutely necessary. Accommodation is not always to be found on board the hulks, the influx of prisoners being great, and a considerable interval of time sometimes elapses between the

sentence of transportation and its being carried into effect.

As far then as the males are concerned, there is now not much to complain of as to delay ; but as the females are generally moved only once a year, it happens that they are kept in their respective prisons a considerable time after they are convicted. I have known instances where women have been detained several years in prison before the sentence of the law was inflicted on them.(a) In a list which I have now lying before me, which is a return presented to the House of Commons, 6 women who were sentenced to 7 years transportation in 1810, were not sent out of the country till 1812, and one not till 1814, so that the last on her arrival, would have suffered more than one half of her punishment ; of those who were transported in 1814 under a sentence of 7 years, 4 had been sentenced in 1811, and 26 in 1812. The hardship of this mode of carrying the law into execution will appear more obvious, when I discuss the impossibility of the women who are thus at a great expence sent abroad, ever returning home at the expiration of their period of punishment. At present it is essential to consider the nature of the prisons themselves

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(a) On the 3d of September last there were several women remaining in Newgate, who had been under sentence of transportation for a considerable period of time. I suppress their names, A. had been there 16 months, B. 3 years, C. 2 years, 3 months, D. 2 years, E. 2 years, 6 months, F. 2 years.

in which they are confined. It is not necessary to enter into any minute detail of the customary neglect, the bodily suffering, the moral corruption which are the usual lot of those who are committed to the far greater part of our prisons ; indeed, the very few exceptions to be found to this general rule, makes it quite unnecessary to suppose otherwise than these miseries are constantly suffered. I shall therefore content myself with the gaols of London and Bristol. Of the wretched females who were transported in 1814, one had been in Newgate since 1811, and 15 since 1812 ; when these miserable beings were in that prison, it was not even the mitigated bad establishment it now is. Mrs. Fry had indeed visited the prisoners, but she had not then accomplished that great work which is now blazoned through the land, at once the honour and opprobrium of the country in which we live. These women formed probably a part of the 288 who were there at one time : the tried and untried, young and old, misdemeanant and felon, all confined together, in this place of filth, misery, closeness and damp, suffering from want of food and bedding, and above all suffering under the effect of their furious passions and abandoned wickedness, these miserable victims to neglect and indifference remained nearly three years ; and at last, when nearly one half of their punishment had been endured, were banished for life from their native country. I do not wish to

occupy your attention with a minute account of the present condition of this prison, the real state of it is before the public. Though two grand juries from ignorance, or obstinacy, or indifference to private sufferings, or public morals may be found to panegyrisé the system that prevails there; yet the report from parliamentary committees, the evidence annexed to them, and above all, the report of last year, Mr. Alderman Wood in the chair<sup>(b)</sup> establish a case against the City of London, which no manœuvre can stifle nor no artifice conceal. The grand juries may individually and collectively disgrace themselves, but they cannot uphold this prison, they cannot succeed much longer in keeping in its present state a place of confinement, through which 2396 persons passed in the year 1817, out of whom only 1375 were convicted. Of this list 81 were between 10 and 14 years of age, 238 between 14 and 18, and 211 between 18 and 21. The Committee of the House of Commons remark "that all the accused on the male side are necessarily crowded together without distinction or discrimination." Here such is the disregard to all rational notions of punish-

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(b) This magistrate is entitled to the commendation of every one who visits Newgate. His unwearied exertions in behalf of his fellow creatures, are duly estimated by all who know how much is required, and how little is given.

ment, that the prisoner for a misdemeanour is worse lodged, and suffers more miseries from confinement than the convicted felon. Here the only place to confine an *untried* prisoner of respectability is the hospital, where felons, prisoners tried and untried are all mingled together. Here three condemned persons are crowded in each cell of small dimensions, in which they are shut up 12 or 14 hours out of the 24, the rest of the day all being associated together. The same committee observe "that such an accumulation of unhappy wretches, with such a deficiency of room and means of separation, is utterly irreconcilable with the solemn situation of those who are placed there to prepare for death."—These are among the *comforts* detailed by one London Grand Jury; this is the *satisfactory arrangement* praised by another. Yet a former Grand Jury presented a statement to the Committee of the House of Commons; in it "they think it their bounden duty to declare their opinion, that this system of confining condemned criminals ought no longer to be suffered to exist in a Christian country."(c) In this prison for the last three years, disease has been to such an extent, as to average between 14 and 16 per cent. daily, nor(d)

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(c) 19, Appendix, House of Commons Report.

(d) Ditto, 20 Appendix.

can this diseased state of the prison be a matter of surprise, when the dirt and filth of the clothes and persons of any of its inmates are taken into account, as well as that from 30 to 40 individuals are confined in a ward of 38 feet by 15, in which, when the prison is crowded, 50 or 60 persons have slept ;—even in the very quarter singled out by all as the most improved, Mrs. Fry deposes “ that among the women, the old and young are intermixed, hardened offenders with first offences, the very lowest of women with respectable married women and maid servants. (e)

Yet with all the proofs of a bad system of imprisonment, for bad it is whether arising from want of room, or want of attention, two grand juries have been found, one in November and the other the 7th of December last, who could gravely present the prison in terms of praise and admiration. The first seeing nothing but “ *order and comfort,*” the second “ *finding the general arrangement very satisfactory.*” After all, what is there to praise ? simply this : the keeper, Mr. Brown, is attentive, vigilant, and civil. The ordinary, Dr. Cotton, regular, warm hearted, and zealous. Because the prisoners are no longer starved for want of food and fuel, naked for want of clothes, and diseased for want of bedding ; because to moral depravity, bodi-

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(e) Prison Committee, 1818, p. 36.



ly torture is not superadded. These things are not surely fit objects for panegyric, their existence at any time was a disgrace, the removal of them warrants no praise. The use of punishment is to reform. What can be said of a system, which renders the wretched victim, through the process of bodily sufferings, more desperate in character and more hardened in vice. I feel most deeply the injury which the public sustains, when the safeguards of the people become the instruments of their oppression ; but from the negligence and culpable omissions of these two grand juries, I turn with real satisfaction, to the report of the Committee of the House of Commons, who performed their duty in putting upon record the opinion, founded upon evidence taken by them, "*that the public interest requires a speedy alteration in the condition of Newgate ; the want of sufficient room to classify the prisoners ; the entire absence, as far as the men and boys are concerned, of all employment ; the promiscuous assemblage of persons of all descriptions, ages, and characters of crime, have deeply impressed them with an opinion that no one can enter the walls of Newgate, without going out from thence more depraved and corrupted than when first committed thereto.*"(f)

In the same list from which I have before quoted, I see that one woman sentenced to 7 years trans-

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(f) Report, 1818, p. 9.

portation at the quarter sessions of Bristol in January, 1811, remained in the prison of that city till May, 1813, and one man who had been convicted there in 1810 was embarked at the same time. Their offences were probably not of a very serious character, for these prisoners were tried at the quarter sessions.

I have visited that disgraceful prison twice, once in summer and once in winter, and can confirm all the statements contained in the account of it given by Mr. Buxton.

This prison has been long well known ; it was reprobated by Howard, by Neild, by all whose duty led them to inspect it. What then for so many years has the magistracy been about ? Where was all this time the Recorder of Bristol ? Was no one to be found in that city who would give up an hour of his time, in an endeavour to clear his native place from so foul a stain ? At last, however, a new goal is to be built ; but, as if there was something in the old prison, which the magistrates of Bristol were unwilling to part with, care seems to be taken to build as slowly as possible, so that for several years longer the prisoners committed to the goal of that city, must continue to undergo the same bodily torture, that has been inflicted for more than a century on thousands.

After having pined and rotted in their respective county goals for a given portion of time, which

varies from three months to as many years, the prisoners are removed on board the different hulks designed for their reception; there are various modes of transport;—some are chained on the tops of coaches; others, as from London, travel in an open caravan, exposed to the inclemency of the weather, to the gaze of the idle and the taunts and mockeries of the cruel, thus exciting as they pass along, the shame and indignation of all those who feel what punishment ought to be—what ought to be its process as well as its fruits. Men and boys, children just emerging from infancy, as young in vice as in years, are fettered together, and (such are the triumphs of our criminal code) paraded through the kingdom,—they are besides generally fettered in the cruelest manner. Mr. Brown, the keeper of Newgate, stated last year in his evidence before the Prison Committee of the House of Commons, that the convicts from Newgate travel unchained; but from the country, particularly last time from York, they were terribly ironed. Some years back I saw in the Compter of the City of London, a considerable number of convicts who were on the road to the hulks. Among them were several children all heavily fettered, ragged and sickly, and carrying in their countenance proofs of the miseries they had undergone. The women too are brought up in the same manner ironed together on the tops of coaches.

Mr. Brown mentioned a case of a young woman

between 17 and 18 years of age, who was removed from the house of correction at Cambridge, (g) to be lodged in Newgate for the night, prior to being sent to the Penitentiary at Milbank; her offence was stealing something from a shop;—she was leg-locked, the chains being brought up between her legs, under her petticoats, and fastened round her waist; in this state she remained all night, there being in Newgate no key which could unlock the chain. Another case of greater atrocity occurred too last year. A woman was sent up from Carlisle on the top of one of the coaches, during the inclement weather of the month of March, chained even more severely than the last victim: she had been brought to bed of a child while in prison, which she was then suckling,—the child was torn from her breast, and deposited, probably to perish, in the parish poor-house: in this state of bodily pain and mental distraction she was brought to Newgate, where, by care, she soon recovered, and was then sent out to Botany Bay on board the vessel which sailed last spring: I saw her on board, and she could not speak of her child without an agony of tears: I ask, if it be fitting that such an offence as was perpetrated by the gaoler at Carlisle, should go un-

punished.

(g) This wretched girl was removed from the town goal of Cambridge, which is a disgrace to the corporation of that city, and though in the heart of the university, divine service is never performed, and there is no religious attendance at all.

punished? I have not however heard that he has even been censured. At the same time, such is the state of that goal, that almost any suffering without, would be lighter than what is daily and hourly experienced by its wretched inmates. Oh, that those who declaim so loudly on the necessity of severe punishment, or those who, because it is judged expedient that the colony of felons on the other side of the Globe, should augment its population, and that this speculation of rash presumptuous ignorance should thrive and multiply its own hideous vices and crimes, think fit annually to send but hundreds of women to Botany Bay, would visit the vessels that take them out, and see what I saw there last year. It is true, that much of the misery attendant on a long voyage was attempted to be mitigated by the exertions of Mrs. Fry and the ladies' committee of Newgate; a thousand little comforts were furnished them; and all the tasks of benevolence were performed with the skill and discretion so eminently characteristic of those excellent persons. Rules and regulations of discipline and separation were laid down, to which the poor creatures cheerfully consented, and instead of sailing from the Thames cursing their country and blaspheming their God, they quitted it patient and humiliated, offering their thanks, and praying for blessings on the heads of those whose benevolence had mitigated the severe penalties of the law. Even those convicts who had come from the country, and who

had not been subject to the moral discipline which Mrs. Fry had introduced into Newgate, lost in a few days their licentious manners; and I believe no ship ever left the Thames in a similar manner, laden with such a cargo, and bound to such a port. How long this decency and decorum lasted I know not. The custom hitherto has been, as soon as the ship cleared the river, for every officer and sailor on board to select some one of the women for his mistress, in all probability the same practice took place here; indeed, I do not know how it can be prevented. Thus the very punishment itself becomes a new source of corruption, and the penalties of the law are used not for correction and restraint, but for the augmentation and perpetuity of vice. It is not necessary to instance cases, which might be easily furnished, of the increased sum of profligacy which has thus been exported to New South Wales: all the women who are transported are not common prostitutes, but even if they were, it is to be remembered, that out of this selection of original guilt at home, improved by the schools of vice, which the administrators of our criminal law keep in their respective prisons and in this brothel of felons which they annually send abroad, the matrons of our infant settlement are to be formed—the future mothers of the men and women of the New England we are constructing the other side of the globe.

I have been led into this digression from the

immediate object of this division of the subject I propose to discuss, because I know no better place to describe the sufferings of the women during their confinement and in their passage to Botany Bay. I return now to the hulks. The men and boys fettered after the manner I have described, are deposited on board the ship stationed at one of the places mentioned in a former page. They are (generally speaking) without any regard to crime or character placed in the first class; but as these arrangements vary at different places; those at Sheerness being much better than those at Portsmouth. I do not think I can better describe the prevailing system, than by relating the result of my own investigation of all the different establishments.

On the 4th of December, 1817, I went on board the two hulks stationed at Portsmouth. The *Leviathan* is fitted up after the manner recommended by the Committee of the House of Commons, (h) and had on board the day I visited it 500 convicts. The prisoners on their arrival are all double ironed and placed in the first class, in divisions of 12 each. (I should say that this arrangement is the ordinary one, though there may be exceptions) without any attention being paid to age, or character, or crime. Upon what principle double irons are used I was unable to discover; it could not be for security; for one of the convicts so fettered was a very

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(h) Vide the *Bellerophon* at Sheerness.

little boy 13 years of age, while stout, strong, healthy persons were walking about with a single iron round their leg ;—it could not be for demerit, or until their persons were known, for many had these heavy irons on, who had been on board for some time, and who bore good characters. Among others was a person who had been cast for death for the riots at Downham, and whose sentence had been commuted to 14 years transportation ; he had been on board 12 months, and had been removed to the middle deck for good conduct. There is here no classification that can be so called, nor indeed, is it possible to have any, in such large societies, but the young and the old, the boy and the man, the felon, deserter, rioter, poacher and bigamist, are all associated together. This is the leading defect ; many parts of the system however are good, the school is of much utility, and the disposition to learn is very great : instances can be shewn of convicts writing and reading well, who, when they came on board did not know a letter. The reward given to good conduct, by the discharge of a certain number every quarter who have served out half their terms, has produced the best effects ; there are, however, some objections to this rule, for as no proportions kept in our law between punishment and crimes, the forced labour on board the hulks for half the term of the sentence is too much for some offences and too little for others, even though the conduct of the criminal may have been regular and orderly during the term of



his confinement. Notwithstanding all that is advanced to the contrary, I do not credit that many examples of reformation can be cited. Who indeed that has ever seen a hulk, can believe that these instances can be common among men, who are condemned to labour in public, exposed to the gaze and criticism of all around them ; self-debasement and the loss of personal pride, and the despair of exposed and proclaimed guilt, are not instruments to work moral reform, and whoever has visited one of these places twice, must have observed the rapid change for the worse effected in the external manners and look of the youthful convict. After he has been subjected to this discipline for some months, there is a hardened fierce demeanour, a furious cast of countenance, expressive of bad passions and suppressed rage, which are to be found only in prisons of this description and in lunatic asylums ;—this dreadful look is to be seen universally in the Presidii of Naples and Spain, in the galleys of France, and the hulks of England, of itself it speaks volumes. Contrast it with what is visible at the Penitentiary and the Refuge for the Destitute, and no difficulty will arise in distinguishing between two systems of punishment, the one which violates the best feelings with which God has endowed mankind, the other which uses those very feelings as the means of moral cure. By the rules and regulations under which this ship is managed, “ all the healthy convicts are ordered to be sent on shore when the weather per-

mits, except such a number of shoe-makers and tailors as it may be necessary to employ in repairing the convicts' clothes, or such other convicts as may be requisite for doing the duty of the ship, who are nevertheless to be occasionally changed, so that this duty may be done by all the convicts in rotation." When I visited this ship 65 persons were so employed, and among those who were at work on shore, there were many whose former situations of life had not accustomed them to hard labour, and to whom it was of course (not including the shame and disgrace) a much greater punishment than to those whose original habits had inured them to it; one of these persons had been a clerk, and had been well brought up, and had defrauded his employers; his crime was great and well merited punishment, but not the punishment of heaving ballast in company with house-breakers and felons of the lowest vices and most abandoned character.

On board the *Leviathan* were 35 convicts under 20 years of age, a boy of 13 was the youngest, he came from Bristol, had been convicted of grand larceny in 1812, and was sentenced to 7 years transportation.

I should not do justice to my own feelings or to the merits of Captain Steelman, and of the persons who were in authority on board of this ship, if I did not add that I saw there much to praise in the management, cleanliness, order and regularity which seemed to exist. No one knew of my visit, and I

saw the whole system as it is ordinarily worked. Though I had much private conversation with several of the prisoners, some of whom I had known in Newgate, and who knew me, they made no complaints of grievances beyond those I have stated; there was an air of mildness in the exercise of authority, and easiness of manner on the part of the officers of the ship, that satisfied me the odious system of flogging and ill-usage had ceased to exist, and that one of kindness had been substituted in its room.

On board the *Laurel*, were 369 convicts, of whom 228 were working on shore. This ship is constructed on the old plan, though some attempt has been made to separate the convicts, who are now placed in 7 divisions, and classed according to the period of their arrival on board and behaviour while there. Captain Lamb appeared to be a mild, good humoured man, and he was so spoken of by all with whom I conversed, yet I heard many complaints on board not of him but of the contractors for the provisions, and one of the convicts who I knew before, and who has since been discharged, told me "that little was affected in the nature of real reformation, the prisoners found it to be their interest to appear satisfied and to make no complaints, but those who imagined that any moral amendment would be effected, deceived themselves to the greatest degree. Their principal relaxation was listening to the tales of successful robbery, in which he added there is a charm;

which no one who has not been in our situation can imagine." This person who was very intelligent and spoke freely on many other subjects, which it is not perhaps prudent to detail, concluded his conversation by saying: "What, Sir, is to become of us? when discharged who will give us work? no wonder so many volunteer to go to the Bay, for what are we to do in England, who can believe any of us to be honest, when they learn we come from the hulks, places where 20 are corrupted for one who is reformed." Indeed what good can result from a society of convicts classed in the following manner; I suppress the names and the ship, but I have both lying now before me.

No. 1. A notorious thief of long standing in the metropolis, aged 45. Nos. 2 and 3. Two young men, 20 and 21, for picking of pockets. No. 4. House-breaking 36. No. 5. Highway robbery 23. Nos. 6 and 7. Privately stealing, two boys of 12 and 14. No. 8. Swindling 19. No. 9. Robbing his master 33. No. 10. Fraud 28. No. 11. A young man of very good character, first offence, 22. No. 12. House-breaking 32.

In such a motley assemblage of crimes, ages and characters I ask, if any rational being can expect but that the bad should become worse, and youth and comparative innocence ripen into the finished and hardened offender? I understand that since my visit of last year, all the boys from the Laurel have been moved on board of the Leviathan, where

they are with those belonging to that ship kept separate from the men, are employed in trades, and do not go on shore; this is as it ought to be, but there is much still left undone.

I visited the Justitia hulk at Woolwich last spring, it is in much the same condition as the Laurel. I saw there many deplorable instances of the progress of corruption; young men whom I had known even in Newgate with modest and reserved manners had now become hardened and sullen. On speaking to some who were less lost than others; of their altered state, they shed tears and replied, "what can we do, we must be as they are here, although we are conscious we become worse daily."

The examination of these two hulk establishments furnished me with what, at least to my mind, was satisfactory evidence as to their unfitness for any purpose of rational punishment; but I was told "do not be in such a hurry to decide; wait till you see the hulks at Sheerness." According on the 14th of July, 1818, I visited them, accompanied by my friend Mr. Crawford.

The first ship we inspected was the Bellerophon, on board of which were 474 convicts divided into three decks, called the upper, middle and lower decks, through the centre of each runs a passage on each side, in which are the wards for the confinement of the prisoners, the regular complement of each ward is 12, but 14 were in several, the dimensions of the wards are small, and they are very low,

each having only one window or port-hole, they are badly lighted and ventilated; the heat was very oppressive, and at night the prisoners must suffer much inconvenience. The mode of dividing the prisoners, for it cannot be called classing, appears to be solely with the view of preserving order on board. When prisoners arrive they are placed on the lower deck, in each of the wards of which two or three steady men are stated to be; in whom the captain can confide, these wardens are encouraged to behave well from the hope of their term of imprisonment being shortened. Such of the prisoners as exhibit proofs of good conduct are, after a term of probation, removed to the upper deck, the prisoners confined in which consist consequently of persons in the first stage of amendment; from this another promotion leads to the middle deck, where only those characters are confined, who are considered to be in a state of improvement, and who are encouraged to persevere by the hope of obtaining their pardon. By this plan the several distinctions of crime are confounded; the individual committed for the first offence, and the hardened and experienced thief, become associated, present conduct being (generally speaking) the only consideration which regulates the classification. Of the 474 prisoners, about 320 are employed on shore; they work in gangs of about 12 each. At this time of the year, they return to the ship at 6 o'clock, the school commences at 6, about 200 voluntarily attend, when

they are exercised in reading and writing, and in moral and religious duties. Prayers are regularly read by the clergyman who lives on board; and twice a week a sermon is delivered. The boys of 15 years of age and under were completely separated from the men; they are confined in 4 wards in the middle deck close to the chapel, which is also appropriated for the purpose of a school, they are employed as shoe-makers, tailors, &c. 52 boys were on board this hulk, of whom 27 were under sentence of transportation for life; 9 for 14 years, and the remainder for 7 years;—they were under the especial care of the Rev. Mr. Edwards, the Chaplain of the ship, who appears to be a judicious, kind-hearted man, and much interested in the welfare of his charge. These boys do not go on shore, but are employed in their respective trades on board the ship: this arrangement is to my mind good,—a greater extent of room is alone required to complete the system, as the boys might then be in smaller communities, and classed less indiscriminately.

We next visited the Retribution;—the arrangements here are similar to those above-mentioned. The Batavia hospital ship was laid along side, and contained the sick of the two ships: the wards were clean and sweet, the whole appeared to be well managed, and there were no complaints.

On board the Retribution, the wards were better ventilated than in the other ships,—they contained

in the whole 552 prisoners, and the following is a list of their respective ages and sentences:

Boys under 15 years of age for		
life	8	} Total 37
Ditto, for 14 years	6	
Ditto, for 7 years	23	
15 and under 20, for life	7	} Total 31
Ditto, for 14 years	9	
Ditto, for 7 years	65	
20 years of age and upwards		
for life	4	} Total 456
Ditto, for 14 years	46	
Ditto, for 7 years	345	
Ditto, for 3 years	1	

We arrived on board this ship at the time of evening prayers, and had the good fortune to witness one of those examinations which take place once or twice a month. The clergyman, Mr. Price, read the service of the Church of England, after which he catechised the boys and several of the men. This office he regularly performs twice a week. He then called up the boys and men who had recently come there from Newgate, adverted before the congregation to the crimes of which they have been guilty, and exacted from them thus publicly a promise to obey the regulations of the



ship. He then called over the names of such who had behaved ill, cautioning them as to their future conduct, praising others who had conducted themselves well, thus holding out censure to the unworthy, and encouragement to those who merited his approbation: the sight was highly gratifying, and the manner of Mr. Price to the boys and men under his care was kind, gentle, and becoming;—we saw the whole scene perfectly unknown. The Captain admitted us into the gallery during the service—the Chaplain knew not we were there, so all we saw and heard may be taken as the accustomed mode of discipline. On board this ship were 37 boys confined as in the Bellerophon, and not working on shore;—they are employed as tailors, shoemakers, coopers, carpenters, bookbinders, &c. One boy brought us a book he had bound, having been at the trade only three months, the workmanship of which was very creditable to him. Another produced a shoe which he had made; a third presented a tub and a pail as proofs of his progress in his trade as cooper: all seemed healthy and cheerful: the school was numerous and regularly attended, and many had been taught to read and write, who a few months before were totally ignorant of these acquirements. Among these boys were two little infants from Newgate of nine years of age. These poor children were much pleased to see us—expressed great delight at their change of situation, and spoke of the Chaplain as their father. I do

not think I was ever more sensibly affected than at this exhibition: the solemnity of the occasion—the nature of the audience—the attention paid during prayers—the sort of anxiety shown by all who might expect to be examined—the honest glow of pride which well-merited praise brought in the cheeks of some, and the shame which was visible in others, satisfied me: the Chaplain understood the task he had to perform, and had found out the true means by which he was to manage the society, whose reformation it was his duty, if possible, to effect. The hulks then at Sheerness are much the best I have seen, but even here there are great errors, and those of a nature that must almost altogether prevent the attainment of the object sought after, and baffle all the praise-worthy exertions of the persons at the head of this establishment.

#### First. The CLASSIFICATION.

Convicts above the age 15 are classed and labour together. There is indeed a ward in the ship, in which a few of the better sort of prisoners are by themselves, but they labour on shore indiscriminately with the others. We were struck with the number of young persons who were on board these two hulks. I have mislaid the return of those in the Bellerophon, but in the Retribution no less than 81, between the age of 15 and 20, associate, go on shore, and labour with the men. Perhaps the best mode of demonstrating the evil of thus placing the young with the old,—

the youth whose first fault has caused him to be removed here with the experienced and hardened offender; will be to relate the cases of two boys, both of whom I have long known, and who are both remarkable characters.

This mode of treating the question may perhaps convince those who would have been proof against argument, though if it were not for daily experience, I should have thought it a mere waste of words and time to sit down seriously to reason upon such a subject. No men who think at all can have any doubt of the injustice and irrationality of the practice.

These two boys of the names of Leary and Farrel, were confined in the same ship, the *Belleophon*, Leary being above 15 years of age, was sent a-shore with the men;—two days before our visit he had attempted to escape with another convict in a boat which was alongside the Dock-yard; they were soon apprehended, and were in double irons when we saw them. I was much struck at the change in the appearance of Leary; his former pleasing manner was quite gone, he was hardened and sullen, and would not raise up his head and look us in the face. Farrel on the contrary, has distinguished himself by his good conduct since he has been at Sheerness, and the Captain and Chaplain of the *Belleophon* spoke of him in the highest terms of commendation. The prisoners have recently subscribed for a silver medal to record their gratitude to their

chaplain, on which is engraved the following inscription :—“ This medal is intended to record the unwearied exertions made by the Rev. E. Edwards, Chaplain of the Bellerophon, to reform the convicts on board that ship, and as a sincere mark of humble respect.” On the reverse.—“ To Hugh Farrel aged 14, for his uniform and approved good conduct—his faithful recital of several parts of the Holy Scriptures—the church articles of religion—different homilies, &c.”

This boy was called into the cabin and produced his medal, his appearance was much improved ; he spoke with propriety, and there was a pride of rectitude, and a consciousness of well merited praise, which when contrasted to the manner of his companion Leary was most striking. Being asked if he had any message to send to Mr. Bedford (a benevolent and excellent person, who had endeavoured in vain to reform him) he replied. “ Please, Sir, to give my thanks to him, and to the rest of the gentlemen for their kindness, and for all the trouble they have had with me.” Farrel and Leary were unquestionably the two most enterprising boys who have come under the notice of that society, which for some years past has been endeavouring to ascertain the causes, and arrest the progress of the contagion of crime, so prevalent among the youth of both sexes in the metropolis. Both these boys are remarkable for the sharpness of their intellect,—they were associated in their pursuits, habits, and characters,—the means of

reformation were repeatedly offered to both, and as often rejected. Leary escaped from the Philanthropic, Farrel from the Refuge, but when they both left London for the hulks, the probability of reform appeared of the two to be on the side of Leary. It is not, however, difficult to account for the improvement of Farrel and for the disgrace of Leary. The difference of their respective ages, agreeable to the rules above mentioned, has subjected these youths to a different discipline, the former being under 15 was placed in the school with the boys, the latter being above 15 was confined in one of the lower-decks with the men, and of course exposed to all the evil resulting from such an association; thus the former has been subjected to a school of moral discipline, the latter to a school of vice; can there be any wonder that both should be known by their fruits, and that Farrel should become better, and Leary worse? Farrel has been under constant inspection, and was probably impelled by the same love of distinction above his companions, which placed him heretofore at the head of a band of juvenile delinquents;—to gain this distinction here, he must be better than those with whom he lived, thus he became studious, attentive, and regular, and is now as much the leader in reformation as he was formerly in the enterprises of vice. Leary has had no such advantages, and was placed in a far different school; he too wished to excel and surpass his companions, but they were men experienced in crime and hardened in

their wickedness;—he was daily with them, assumed their habits, learnt their conversation, profited by their instruction, and will, I doubt not, if let loose upon the public, furnish early and convincing proofs of the nature of the education he has received. The history of these two boys tells the melancholy truth, that if the discipline of the hulks saves the child, it ruins the boy of riper years. In one of the ships alone at Sheerness, no less than 81 young persons, between the ages of 15 and 20, were in the same situation as the wretched Leary:—they might all have been instructed—they would probably all have been reformed—they might have acquired habits of industry;—they daily curse the strength that enables them to go to daily labour; and whether they are ultimately sent abroad, or at the expiration of their respective sentences, turned out loose upon society at home, they carry with them a knowledge, the wages of which are sin, and the end of which is death. The condition of these youths is indeed most lamentable. In all other situations of life, the law supposes boys of these ages to be placed under tutelage—to live under restraint; not being men, they are neither exposed to their temptations, nor possess their privileges. In the hulks alone, where discipline ought to abound, they are classed as men, punished as men—boys in age;—they are not so in treatment. But at a period of life when the heart is flexible and the

whole character easy to bend and direct, they are exposed in the society of those, whose hardened and incorrigible vices, have met with the severest punishments of the law. Is this common *humanity*? is it common sense? I beseech you then to abandon a system which produces so little good and so much misery, and to extend your compassion to the misfortunes of the youths, whose situation I have been attempting to describe, and who are daily exposed, unpitied, to the greatest of all calamities, the loss of self-respect, and the association with vicious companions.

#### LABOUR.

There is on board the hulks a want of continued labour. I speak not of a deficiency of work, which ought to be performed by all the prisoners to defray their cost and maintenance, for even that is altogether wanting here;—but of that steady uniform employment both of body and mind, which is the most efficient part of prison discipline. When we were at Sheerness, even during the summer months, the convicts worked but a few hours ashore. Sometimes in winter they do not go ashore at all, and when they do, they labour but a small number of hours. It appears from the 28th report of finance, that the average number of persons on board the hulks was in 1797, 1402, and the sum total for their maintenance 33,578*l.* 14*s.* 10*d*; comparing the number maintained with the total expence

incurred in the year, the individual cost of each convict will be at the rate of 23*l.* 19*s.* per head per annum; of which 22*l.* 1*s.* 0½*d.* was the contract price, at the rate of 1*s.* 2*d.* per day. The total value of labour performed was calculated at 15,802*l.* 17*s.* 10*d.*; so the total expence (per head) borne by the public is there taken to be at the rate of 12*l.* 13*s.* 7½*d.* per annum. In 1810 the total expence of these establishments was 59,290*l.* 13*s.* 9½*d.* for 2003 convicts, or rather more than 29*l.* 12*s.*; and in 1811 at 66,328*l.* 15*s.* 7½*d.* or about 32*l.* 9*s.* per head; but in these sums is included the cost of fitting up an additional hulk at Sheerness, amounting to about 4,250*l.* An estimate having been made out of the value of the work done at their respective stations by the convicts, — the return gave for the year 1810 — 21,788*l.* 9*s.* 5*d.*, and for that of 1811, 24,447*l.* 2*s.* 1*d.* which sums, deducted from the sums of 59,290*l.* 13*s.* 9½*d.*, and 66,328*l.* 15*s.* 7½*d.* respectively, will leave an excess of expenditure, on account of the hulk establishment as follows; — for the year 1810 — 37,502*l.* 3*s.* 7½*d.*, or about 18*l.* 14*s.* 6*d.*, and for 1811, 41,881*l.* 13*s.* 6*d.* or rather more than 20*l.* 9*s.* 6*d.* per head, . . . . .

The Committee of the House of Commons in 1812 objected to this cost as being too great; — they complained that the contract was made on too expensive a scale, the allowances to each prisoner being calculated at 1*s.* 11*d.* a day, which at the



Penitentiaries at Gloucester and Southwell, they do not exceed 9d.

From the 1st of January to the 1st of July, 1816, 2283 convicts were on board the hulks, the cost of whom was 34,199*l.* 7*s.* 7*d.*, or 14*l.* 19*s.* 7*d.* per head, and their earnings were 18,544*l.* 8*s.* 7*d.*, or 8*l.* 18*s.* 7*d.* per man.

From 1st of July, 1816, to 1st of January, 1817, there were 2120 prisoners, who cost 34,908*l.* 15*s.* 11½*d.*, or 16*l.* 15*s.* 9*d.* per head, and their earnings, being 15,651*l.* 7*s.* 6*d.*, or 7*l.* 7*s.* 7½*d.* Thus the annual expence in 1816 was 34*l.* 15*s.* 4½*d.* per head,—deduct the earnings, and the balance of each is 18*l.* 9*s.* 1½*d.*

From the 1st of January, 1817, to the 1st of July, there were 2186 prisoners, who cost 41,830*l.* 12*s.* 1*d.*, or 19*l.* 2*s.* 8½*d.* per head,—they earned 17,218*l.* 19*s.*, or 7*l.* 17*s.* 6½*d.* per man.

From the 1st of July, 1817, to January 1, 1818, 2829 prisoners cost 42,770*l.* 1*s.* 0½*d.*, or 18*l.* 7*s.* 3½*d.* per head,—they earned 18,737*l.* 18*s.* 6*d.*, or 8*l.* 0*s.* 10½*d.* per man.

The annual expence thus was 37*l.* 9*s.* 11½*d.* per man,—deduct the earnings, and the balance of cost is 21*l.* 11*s.* 6½*d.*

It is not stated in the annual reports upon what principle this labour is estimated, whether for the work specifically done in each dock-yard, agreeable to the plan proposed by the Committee of the House of Commons, or according to a rough estimate of

the value of each man's labour. I should conclude the latter, and if so, the calculation is probably much overstated. According to the evidence annexed to the third report of the Committee on Penitentiary Houses, much difference of opinion then existed among the persons consulted at the different stations as to the value of convict labour. Colonel Pilkerton divided the labourers into three classes of workmen, and valued them as highly as if they were free. Mr. Sison, of Woolwich, estimated the convict-work on some occasions at as high a value as any other labourer, at other times as equal to about two-thirds. At Sheerness Mr. Perkin considers the value of the labour of an able bodied convict to be in proportion to that of a paid labourer as 2 is to 3. At Portsmouth this labour is estimated at one-third only; and General Fisher, of the Ordnance Department, calculates the labour of an able bodied convict at about one-half of that of a paid workman of equal strength, supposing them to be employed for the same time.

With this difference of opinion, I cannot but consider the estimate produced before Parliament as erroneous. Taking then into account the few hours of labour per day during winter, the time that is lost in foggy, rainy, and bad weather, the disadvantages on account of irons, the inability to labour in some, and the unwillingness in all, is it too much to doubt the accuracy of the return, and to discredit

the statement that convict labour amounted, from January, 1817, to January 1818, to 35,956*l.*? in truth there is but one mode of ascertaining the true value with accuracy, and that is the measurement of the work done at each place, and the same account taken of the labour as is practised in other cases where free hands are employed. Besides the expense of these convict establishments is hourly augmenting; it has reached already a most formidable amount, and it is surely time to determine whether the system can be made less costly. However much I value public oeconomy, yet the expenditure of a few thousand pounds more or less, is nothing in comparison to the national object of constructing places of punishment, in which moral and religious improvement can go hand in hand with the attainment of industrious habits; how little then the hulks can be said to attain either of these objects; those who know them best and learn most about them can testify. I read with surprize the annual report presented to Parliament, and the account given by the respective chaplains of each ship. These statements, though the authors are very respectable and praise-worthy persons, are not to be admitted without great caution. These gentlemen are the heroes of their own works, and without meaning offence to those whose exertions I highly value, they are too apt to be their own panegyrists. Notwithstanding these authorities I am

incredulous as to the miracles of reformation, which are stated to be annually worked on board the different hulks on all varieties of persons under all varieties of management. I can never believe that the same reformation took place among the boys of Portsmouth, who laboured and associated with the men, as follows the wise and benevolent, but completely opposite system adopted at Sheerness. The Committee of the House of Commons advert to this species of exaggeration and overstatement, and naturally enough refuse their entire credence to these laudatory reports. From all the information I have obtained, and from every thing I saw during the visits I made to these different establishments, I have come to the conclusion that though they are much improved, though they have ceased to be the depositories of bodily disease, and hopeless moral corruption, yet from the necessary arrangements which cannot be dispensed with, such as the association in large communities of different characters and ages, with the working on shore exposed to the public eye, the evil must of necessity preponderate over the good, and the far greater number of prisoners be discharged in a state of augmented demoralization.

I understand that a practice prevails on board some of the hulks, which wears an appearance very different from that which is so eloquently described in the annual report. On a convict obtaining his discharge, or having worked out his time, he receives from his companions, on quitting the hulk, a letter

of introduction to their friends in London, with directions to the public houses they frequent. I have been told so by one who actually received such a testimonial, and who, on his arrival in London, went to the houses so pointed out, and there recognized the faces of old acquaintances—regular established thieves.

No doubt the answer to these remarks on the moral condition of the prisoners discharged from the hulks, will be an account of the small number of persons who return there. There is indeed more apparent than real value in this. I ask, what proof have those who make it, that the same persons do not repeatedly return? how can the chaplains at Portsmouth or Sheerness become acquainted with other convicts, than those on board their respective hulks? Do they know any thing of the interior of the prisons; or can they tell how many of the persons executed last year had passed through the hulks, and had there finished the education which led to the loss of their lives? I have now before me a list containing the names of many convicts who have been a second time in the hulks of Portsmouth; and I never was in Newgate without seeing several who had returned from Botany Bay, and who of course had passed through one of these establishments. All the persons best acquainted with these subjects, and whose duty it is to trace the steps of discharged delinquents, have assured me the case is directly the reverse, the

greater part of the convicts coming again on the town, and carrying on the same system of fraud and robbery as before their first commitment. I make no doubt the recollection of the miseries endured have deterred, and daily do deter, many from pursuing the same line of life which led to their original punishment, and the exertions of the praise-worthy persons who have the management of them, have also upon many the most salutary effect ; but by far the greater portion of the discharged convicts fully bear out the opinions expressed by the police magistrates and officers, before the Police Committee ; and Mr. Colquhoun is not in error, when he says—"that he has seldom or  
 " ever known an instance of an individual dis-  
 " charged from the hulks, who has ever returned to  
 " honest industry ; but that the indiscriminate  
 " mixture of criminals which takes place in those  
 " establishments, renders them complete seminaries  
 " of vice and wickedness." In a word, my Lord, what is there in all the boasted improvements, to prevent us from coming to the conclusion which the Committee of the House of Commons arrived at in the 28th report (a)—"that under these circum-  
 " stances there remains but little hope that the indi-  
 " viduals who have been exposed to the contagion  
 " of such criminal example, whether they shall be  
 " finally sent to New South Wales, or the period of

“their sentence shall be suffered to expire here,  
 “will ever again become useful members of society;  
 “but on the contrary, it is to be feared, that when-  
 “ever they shall again be discharged on the public,  
 “they will come more expert in fraud, and more  
 “hardened in vice.”

I have thus stated the result of the two first stages of punishment, which by the sentence of the law are inflicted on criminal convicts; these are, however, only a part of the process which terminates at last in transportation to New South Wales.

The history of that settlement is already before the public, and ample information can be gained by whoever is anxious to acquire it, in the works of Captain Hunter and Mr. Phillips, both Governors of the Colony, and in the narrative of Mr. Collins, Judge Advocate, who resided at Botany Bay from the first plantation of the settlement in 1788 to 1801. It is not, therefore, necessary to enter into a minute detail of this cruel experiment, the facts contained in these narratives, and which have been exposed to the public eye in the works of Mr. Bentham (a) and Mr. Dumont, (b) ought to have satisfied every one of the commonest understanding, that whatever ultimate success the settlement may have as a colony, as a place of punishment and reformation, it has entirely failed. No where else are to be found such frequent ex-

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(a) Vide letter to Lord Pelham, 1802.

(b) Essai sur les peines et les recompenses.

amples of careless and cruel legislation, and if the facts stated by these respectable authorities did not stand upon the evidence of eye-witnesses, and of persons disposed to think well of the future prospects of the wretched beings, whose crimes and vices they have painted in such glowing colours, and to uphold the very system, the character of which they described, no one would upon less testimony have ventured to express a belief that in the year 1788, there could have been found in the British Councils, Ministers of State, who could submit any portion of their fellow creatures to the torture of such a system of punishment. Without this testimony, could it have been credited, that when the vessels sailed, the spot where the convicts were to be sent had not even been discovered? (c) that of the 776 persons who were transported 725 were under sentence only for 7 years, of whom several had been convicted in 1782 and 3? (d) Ship after ship was sent out with convicts, and no calendar of their terms along with them. (e) In this promiscuous punishment neither infancy nor age was spared; many of its victims were bending under the pressure of age and its attendant infirmities; many so weak, that instead of being capable of labour they required assistance themselves. (f) Such was the careless manner with which the ships were fitted up, or from the want of proper regulations on board; that the mortality was prodigious. During

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(c) Collins, vol. 1. p. 35.

(e) Collins, p. 74.

(d) Phillip's Voyage.

(f) Ditto, 119.



the first 8 years one-tenth of the convicts died on the passage ; on the arrival of three of the ships 200 sick were landed, 281 persons having died on board. During the passage the dead were concealed that the living might share their rations, and when they were on shore, the convicts in the hospital, though dying themselves, watched the moment when any one died to strip him of his covering.(g) If disease swept away hundreds on board the ships, famine completed the work of destruction on shore. It was distressing (writes Mr. Collins) to see the poor creatures daily dropping into the grave ; it was far more afflicting to observe the countenances and emaciated persons of many who remained soon to follow their miserable companions.(h) Such was the distress, from want of food and clothing, four or five hundred convicts working perfectly naked(i) that no property was safe, and the wretches who were concerned in the commission of these robberies, were in general too weak to receive a punishment adequate to their crimes, (k) while the settlement was starving from want of food, the gardens were wantonly destroyed, and the live stock stabbed.(l) But horrible as were the physical suffer-

(g) Collins, 122, 127.

(h) Collins, 210. Of 152 convicts who came by the Queen Charlotte from Ireland in 1791, 50 were alive in April, 179

(i) Captain Hunter's Evidence, House of Common's Rep 1809.

(k) Collins, 210.

(l) Hunter's Voyage, 373:

ings of the thousands of wretches whom the English government sent to perish on the other side of the globe, the moral corruption reached a height hitherto unknown in any age or country. Where can it else be said that nearly the whole population were regardless of the future and occupied only with the present, (m) unless indeed in that period of disease described by Thucydides in his account of the plague of Athens, in which despair seized all classes, and as no one could fly from the danger which every hour might destroy him, all restraint was thrown aside, and the gratification of every passion indulged? In what other quarter of the world can it be said that all persons broke their trusts; no rewards inducing witnesses to come forward to give evidence; no punishment for crime unless the criminal was taken in the fact; (n) where the industrious and well-disposed became the continual prey to the idle and worthless; where the women were a disgrace to their sex, at the bottom of every infamous transaction, and far worse than the men, that is to say, worse than men, whom the same author describes as robbers, murderers, and incendiaries? (o) Yet women of this description were the matrons of the colony, school-mistresses to all the men of the settlement, and to whose arts were exposed the officers, soldiers, sailors, and the whole youth of the colony. Nor

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(m) Collins, 197.

(o) Collins, 2 Vol. 218.

(n) Collins, 197.

was the perpetration of crimes confined to the convicts; the free-settlers are described by the same writer as worthless, idle, dissolute, and drunken, selling even their last bushel of corn for spirits, and leaving their families to starve, (p) and when seed has been given them, not unfrequently selling it at the doors for the same indulgence:—the passion for spirits among all classes is described as a mania, there being nothing they would not risk to obtain them, and those who did any extra labour refusing to be paid in money but demanding spirits. (q)

Is it necessary, I ask, to specify any more examples of improvidence and crime, not exceptions indeed to a general system of good conduct, but the system itself? no punishment could deter, no example could intimidate; day after day numbers were flogged and executed, yet no one crime was diminished, no evil propensity reformed. (r) Thus the peopling of the settlement is described as the importation of the plague and yellow fever; (s) and Mr. Collins, concluding his own narrative, expresses a hope “that the annalist, who is to record the future transactions of the colony, may find it a pleasant field to travel in, where his steps will not be every moment beset with murderers and incendiaries:” (t) Such was, in 1802, the result of the experiment, which British statesmen made on British

(p) Collins, 18. 199.

(r) Collins, 180.

(q) Collins, 327.

(s) Collins. (t) Do. 277.

subjects; can there be any doubt that it would have been more merciful to have put into execution the plan which the late Lord Auckland tells us was in contemplation; to *exchange* English felons at Tunis and Algiers for the deliverance of christian slaves? (u)

The questions now to be considered are;—first, what are the objects and results of the punishment of transportation? and secondly, what is the present state of the colony of New South Wales?

I shall refrain from entering into an examination of the various qualities which rational punishment ought to possess; the whole question is exhausted in the able treatise of Mr. Bentham, written in French by Mr. Dumont, (x) and to which, and to the other works of Mr. Bentham, I refer your lordship. It is sufficient for my present purpose to consider this mode of punishment under three heads; first, its exemplary; second, its reformatory; third, its economical character.

I assume then, that no man is punished for the mere pleasure of punishing, for the delight of retaliating injury, or inflicting pain on a criminal, but the sentence of the law is put in force for the purpose of preventing the commission of crime. Though

(u) Preface to an Account of the colony of New South Wales.  
 (x) This work is above any praise which I can bestow; those who know it best, will perceive how much I have profited by the study of it. I do not specify all the instances where I have taken an argument or an illustration, the whole subject is there exhausted, and to write at all, is to copy the work itself.

it may be true that vengeance and passion were at first the leading motives for the infliction of all punishments, and that prejudice, the result of habit, has persevered in them; yet as the principle of utility ought to be the guide of all just legislation, so no punishment is either warrantable or salutary, the effect of which is not the prevention of offences; the example then of transportation, is the sending out of the kingdom from their country, family, and friends; persons who are guilty of certain offences. Thus, in order to strike terror at home, criminals are punished abroad; and in order that the people of England may be honest, the dishonest are sent to the Antipodes, as far as possible from the observation and knowledge of those who are to be benefited by their punishment. Another great fault of this mode of punishment is its inequality; it is true that most punishments are liable to this capital defect, but none more signally than that of transportation;—it is different to different men, to age, to youth, to the single, to the married, the healthy and strong,—to some it is a punishment, to others it is an adventure; but a punishment should be the same thing to all persons and to all times. (y) It is not the real suffering of the criminal that produces the moral effect, it is that which strikes the eye, which fixes itself in the mind, and which is associated with every temptation that leads to the commission of

offences. In transportation the sufferings are great to the individual, they are almost unknown to, because they are unseen by, the public : the perils of the sea, the dangers of shipwreck, accidents by fire, the long voyage, the perpetual torture of close confinement, rendered necessary for secure detention, the chances of contagious disease, fatal examples of which have occurred ; these matters are not taken into the account by that class of persons who are liable to incur the penalties, who read little, who reflect less, and who are only affected by what is present to their senses ; the sad realities of this voyage of misery are not even thought of ; illusions of hope and pleasure, and above all, the love of change of place and of travelling, so peculiarly strong in the English youth, (z) all conspire to stifle alarm, and to turn that which the law intends as a punishment, into a cheerful speculation and profitable enterprize. These consequences, a rational person, reasoning *a priori*, might have drawn from the punishment of transportation ;—the results answer this expectation. In the first place, the voyage to Botany Bay is disarmed of half its terrors—the settlement is no longer a desert—the colonists no longer perish of famine and diseases, the consequences of famine—the chances of death by contagious complaints are much diminished, (the con-

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(z) Theorie des Peines et des recompenses, chapitre 11. tome 1.

victs generally arriving in good health) thus the real sufferings are diminished, consequently so much of the terror, (if any be excited at all, which I much doubt) to be struck by the dread of suffering them, is diminished also." The more thriving the settlement, the more frequented ;—the more frequented, the more easy the means of escape and return ;—the more thriving too, the less terrible.(a) All those who have had an opportunity of witnessing the effect of this system of transportation, agree in opinion, that it is no longer an object of dread ; it has, in fact, generally ceased to be a punishment :—true it is, to a father of a family, to the mother who leaves her children, this perpetual separation from those whom they love and whom they support, is a cruel blow, and when I consider the merciless character of the law which inflicts it, a severe penalty ; but by far the greater number of persons who suffer this punishment, regard it in quite a different light. Mr. Cotton, the Ordinary of Newgate, informed the Police Committee last year, " that the generality of those who are transported consider it as a party of pleasure—as going out to see the world ; they evince no penitence, no contrition, but seem to rejoice in the thing, many of them to court it. I have heard them, when the sentence of transportation has been passed by the

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(a) 28th Report of Finance,

Recorder, return thanks for it, and seem overjoyed at their sentence : the very last party that went off, when they were put into the caravan, shouted and huzzaed and were very joyous ; several of them called out to the keepers who were there in the yard, the first fine Sunday we will have a glorious Kangaroo hunt at the Bay, seeming to anticipate a great deal of pleasure." He was asked if those persons were married or single, and his answer was, " by far the greater number of them were unmarried. Some of them are anxious that their wives and children should follow them, others care nothing about either wives or children, and are glad to get rid of them.(b)"

Mrs. Fry spoke too of the effects which this system had upon the women in Newgate, and told an affecting story of a poor woman, whose anxiety to join her husband led her to the commission of an offence for which she was executed.(c) Had she indeed robbed her master, or breaking the trust reposed in her, adding the blackest moral ingratitude to legal guilt, she would probably have been successful in this unusual proof of conjugal affection ; but in an evil hour she uttered a forged note, and was one of those poor wretches whom the Bank, usurping the power of the crown to decide who shall or who shall not suffer death, thought fit



to prosecute, and she added one more to their numerous victims.

Dr. Forde too, a respectable and ill-used man, upon whom the negligence of others was visited, and who was Ordinary of Newgate for sixteen years, informed the same Committee, that all who knew a trade, or were going to learn one, exulted in transportation; the only grievance of it was to those who had families, or who were advanced in life,—the young were delighted at it, and in general the old are rejoiced at the expectation of meeting former acquaintances. Is it, indeed, necessary to add to this testimony a declaration, that I have heard similar facts from every keeper of every gaol I ever visited, and those who had the charge of the convicts on board the hulks concurred in the same statement. But there is still another evidence to be produced, which to my mind is decisive, and that is, the number of persons who volunteer to be sent out to New South Wales. I have been told that by far the greater number of persons who are sent out under a sentence of seven years, are volunteers. Mr. Goulbourn, in the House of Commons, when I commented on the great expense incurred, replied; that the number was augmented to such an extent by the system of volunteering, which was so prevalent.

I have now before me a list of 25 young persons, under twenty years of age, who were on board the *Leviathan* last Christmas, under sentence of 7 years

transportation; 15 of these were to be sent to New South Wales, 13 of them at their own request. I have also never visited Newgate without being assailed with petitions to the same effect; and not many weeks back, 24 young persons who were confined there, and whose individual ages averaged 22 years, all sentenced for 7 years, made a similar application. Thus the severest sentence of the law, next to death, is considered less severe than the milder forms of punishment, and that which is meant to strike terror, and which is the commutation for death itself, is not only practically inflicted for the smallest offences which incur the penalty of transportation, but is even by the convicts themselves, an object of choice, and considered not as a punishment, but an indulgence: this is indeed an inversion of all the rules of justice, and could only happen in a country, the penal statutes of which are of the nature that ours are. Can we wonder then that crime increases, that property and life are insecure, that fraud ripens into robbery and murder, that the law ceases to be a terror, but to the good, and the punishments of the law produce neither example nor reformation?

I ask then with confidence, does not this portion at least of the penal statutes require revision? Is it possible with safety to persevere any longer in inflicting punishments, which are neither a terror to the delinquent, nor an example to others?

The next quality of the punishment of transpor-

tation, which I propose to examine, is its reformatory:

Upon this point it is difficult to obtain correct information,—some species of evidence is to be admitted with great caution. The different Governors of New South Wales for example, have an interest in shewing that great improvements took place during their respective administrations; and if those, whose power is at an end, have that bias on their judgments; the present Governor must have it in the greatest degree; his stay has already been prolonged beyond the usual term of years, and if he can satisfy his masters at home, that a necessary connexion exists between the improvements in the colony, and his continuance in office, he may retain his situation for the remainder of his life. Testimony, however, is to be met with, drawn from parliamentary documents, which though meagre and incomplete, when coupled with oral evidence and official document, establish a case which to my mind is most conclusive. But before I describe the nature of this testimony, it seems necessary for me to state what occurs on the arrival of a ship laden with convicts from England. First, as to the males:—the men are paraded on the deck, or drawn up on shore, and notice being given of their arrival, the officers and settlers who want servants select them; as might have been imagined, the officers are stated to have the first choice, and until these gentlemen have made their selection, no settler, without interest,

can obtain a servant ;(q) of course this is a matter of favour, and judging from what takes place at home, even supposing no more abuses of office to exist in New South Wales than here, is it uncharitable to conclude, that what is worth money will be bought by money? Governor Bligh informed the Committee of the House of Commons, that when the convicts are sent out, the lists that come with them are very defective, containing only the return of the names of the persons, and not of the offences for which they have been punished,(r) so that the government, entirely ignorant of the crimes of each individual, is consequently unable to place them according to the nature of their offences ; all are therefore treated alike, and if any favour be shewn, it may be shewn to the most unworthy. It seems to be generally admitted that the servants to the farming settlers are the best conducted, and in that class are to be found the greatest number of instances of a return to good conduct, and to habits of industry. Whatever number then of convicts who are not thus hired or taken as servants by the officers and settlers, or who have not tickets of leave, are employed in the government service from six in the morning till three in the afternoon, the remainder of the day they have to themselves, and are loose upon the town. Very contradictory statements are

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(q) Appendix, Select Committee on Transportation, 1812, p. 54.

(r) Ditto, p. 33.

given of the conduct of these men. Governor Bligh considers them to be idle and dissolute, (e) and comparing all the different accounts, it is evident that though some may be sober and industrious, and gain considerable sums of money by their extra labour, yet by far the greater proportion fully warrant the character given of them by that gentleman.

The labourers for government are divided into gangs, over every gang there is an overseer, and over two or three gangs a superintendent. The convicts who are given to the settlers as servants, may be divided into two classes ; those that are employed as domestic servants in the family, and those who live out, and are only under the controul of the overseer, who sees they perform their daily work. The first class, who are under the eyes of their respective masters, and resident under his roof, are nothing better nor worse than domestic servants in other places ; with this difference, however, that the standard of morals, and the purity of domestic example, are not quite as high in New South Wales as in Europe. To be sure, in a country where the women bear so small a proportion to the men, and where the number of marriages were so few, that in 1807 there were of 1440 women in the colony, only 395 living in wedlock, the rest being in a state of prostitution. To talk of public morals is to

expose the whole subject to ridicule ; but low as these settlers must be in any scale in any civilized country, no doubt can be entertained that a domestic servant must be under more restraint when living in the family than elsewhere. Some of these settlers are sufficiently opulent to employ 30 or 40 convicts, and those who are not under their roofs reside three or four together in detached cottages ; these living out of the immediate controul and inspection of their masters, make but little progress in the way of reformation, and may be considered as retaining most of the habits which laid the foundation for the commission of their original offences. As the greater part of the settlement at Sidney and Paramatta may be regarded as a straggling village, it is idle to suppose the convicts there are in any way different from what they were before they left England. The field of their operations is indeed narrowed, but their low and sordid vices, the habits of idleness, and the love of spirituous liquors, remain the same, and produce, as might be expected, the same fruits : there is no inspection besides that of the public police, which is probably here, as elsewhere, conversant only with the overt acts of crime. At meal-times, at the hours of recreation, there is no inspection. (f) Even during labour it is very imperfect, interrupted, and occasional. Hence,

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(f) *Panopticon versus New South Wales.* By Jeremy Bentham, Esq.

no correction of the very propensity, which was itself the cause of crime, or which led to it. Sloth, drunkenness, gaming, irregularities of all sorts, profaneness, rapacity, violences of temper,—all these vices remain unchecked. This very deficiency of inspection creates a radical incapacity in the Botany Bay system to produce any thing but positive evil. Besides, who are the settlers? Governor Bligh informed the Committee of the House of Commons, that out of above 10,000 inhabitants, there were in 1807, 166 free men who had never been convicts, and whom he considered competent to perform the duties of jury-men. No doubt this number may be at present augmented. Some of the convicts too, who have worked out their times, or who have obtained pardons, may have reformed and become honest men; but it is impossible to forget that he who knew them best, and who lived longest among them, describes the greater portion of them as worse than the convicts themselves.(g) Mr. Collins tells us too, of the failure of duty in all classes, of constables, overseers, public officers, (who were all bribed) of clerks who altered the terms of the sentence of 200 convicts, receiving from each a gratuity of 8*l.* or 10*l.* sterling. There is perhaps no class to be found there which has escaped this universal corruption; government store-keepers, superintendants, stewards, constables, soldiers, sai-

lors, as well in the merchant as the public service, (h) have all been contaminated—the difficulty is not to find the delinquent, but the honest man. Is it then possible to draw any other conclusion, but that New South Wales is a place of corruption, and not one of reform? In looking, however, minutely into the evidence taken before the Committee of the House of Commons, I cannot avoid remarking, that all the praise is general; all the assertions of improvement, and the advances made in reformation, are couched in the largest and most comprehensive terms; the witnesses examined there never condescend to produce any document; no return of the number of persons tried, and convicted, and executed; nothing to prove the way criminal justice is administered, and the number of persons punished, either by the loss of life, or by transportation to Van Dieman's Land. There is not even an account of the *customary* administration of justice; no estimate of the number of persons flogged, and the nature of the offences for which that punishment is inflicted. Governor Bligh, however, has furnished an interesting document, purporting to be a list of criminal trials between August, 1806, and August, 1807; it appears there that 117 persons were within that period tried by the criminal court, (i) no doubt all of them for serious crimes; for the punishment of smaller

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(h) Collins, 139, 455, 363, 60, 111, 134, 331.

(i) Page 42, Appendix, House of Common's Report, 1812.



offences, the summary infliction of flogging at the discretion of the magistrate, or according to Mr. Margarot, (*k*) at the will and pleasure of any officer in the colony, is the ordinary mode of proceeding. Taking the population to have been about 8,000 souls, one person in 68 would have been tried; whereas, in England, in the greatest year of crime ever known, including in the number of persons tried all the misdemeanants and smaller offenders, the whole amount will be in round numbers, about 13,000, which is to the population about one in 600. Upon official statement, I am then content to let the real condition of this felon settlement be estimated; the merits or demerits of the system will then rest upon the shewing of its defenders and panegyrists, and in answer to all theories of reformation, pious hopes, and confident assertions, I refer to the works of Mr. Collins, and the report of the transportation committee in 1812.

Mr. Burke somewhere says, that in India all was well and flourishing, till its governors quarrelled among themselves. In New South Wales the disputes which have taken place, and the acts of violence which have been perpetrated, have been the means of removing the veil, which a partial government at home, and an interested local jurisdiction abroad, had covered the whole management of the affairs of that colony. I subjoin to this letter a

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(*k*) Ditto, p. 54. This power is abused every day and hour.

remonstrance, sent by the Rev. Mr. Marsden, principal Chaplain to the settlement, to Governor Macquarrie. This respectable minister of the Gospel, has been, I believe, in the colony since 1794 ; he, however, returned to England for a short time some years back; and it was then, that he took occasion to inform the Secretary of State, Lord Castlereagh, of some of the enormities committed in the settlement ; this information produced a letter, which is to be found in the Appendix to the House of Common's report in 1812, written by that noble personage to Governor Macquarrie, as well as an answer from him. How far the orders of one party, or the promises of the other, have been complied with, the annexed letter will demonstrate. Of Mr. Marsden I know nothing personally, but of his excellent character, I have heard much ; he is one of those distinguished persons, whom, praise be to God, are daily raised up among us, whose employment of life is, to carry the blessings of the Gospel to distant countries, to relieve the spiritual wants of their fellow-creatures, and to spread far and wide the doctrines of peace and good-will.

This gentleman has had a most difficult duty to perform, but he has done it well. " In the midst of despair he has performed all the tasks of hope ;" and though he is agonized at the life he is compelled to lead, at the sights and scenes he is doomed to witness ; though his lot is cast among thieves and felons, murderers and incendiaries ; though the

experiment of reform in the other side of the globe is daily ripening into such a school of vice and crime, the like of which the world never saw, nor has the heart of man conceived, yet he resolutely and firmly clings to his post ; neglect has not slackened his zeal, nor failure his exertions. I will not lessen the value of this heart-rending statement, by attempting to use any other words but those of the writer, in describing the details of misery and neglect which he enumerates ; the letter is ample evidence of the state of moral reformation which the friends to this colony of felons vaunt as having taken place. In 1802, when pressed by the proofs of augmented crime and guilt, which the narrative of Mr. Collins exposed to the public view ; the facts were not denied, but assertions were confidently made, that things were much better, improvements hourly making, and all that was asked was time to bring this favoured colony to something which should approach in excellence, those settlements, which to the honor of our species, have been established in North America. Year after year these confident statements were made. In 1810 Governor Macquarrie, writing to Lord Castlereagh, says, " I am rejoiced to have it in my power to inform your Lordship that there is already ; within the short period of my government, a very apparent change for the better in the religious tendency and morals of all the classes of the community ; and he cites as a proof, that " *persons of all religious persuasions, and*

*descriptions attend divine worship on Sundays?* No doubt religious attendance is an important step towards moral amendment; but in Newgate the prisoners attend chapel every Sunday, yet who has ever heard of any one leaving that prison reformed? These general assertions of amendment are easily made, they cost little beyond the ink used in writing them. If Governor Macquarrie had been able to shew that crime was less abundant, property more secure, the goals empty of prisoners, no one arbitrarily flogged for jumping over a wall, or walking across a field; that the sound of the lash was not heard from morning to night, perjury less frequent, detection of crime more easy, criminal combination less general, information of all kinds less discountenanced, and justice less discredited. If all these real evidences of an improved moral and political condition could have been shown and *proved*, I for one should have augured well of the future progress of the settlement; but until all these things can be established, I consider the general terms of praise that are used as little more than waste paper. They may indeed be quoted in Parliament, and give a turn to a debate; months elapse before the fallacies can be detected; but in the mean time the government is praised, and what is more to the purpose, the Governor is continued in his situation. *On the 30th of April, 1810.* Governor Macquarrie acknowledged the receipt of Lord Castlereagh's letter—directing arrangements to be made in respect of the women

convicts. *He allows they were improperly treated before*, and he promises to keep them separate in such manner as they may best derive the advantage of industry and good character; yet, on the 19th July 1815, more than five years after the receipt of the letter, the reply, and the solemn pledge, the system remained the same, and was so essentially different from the instructions given from home, that the Colonial Chaplain felt it to be his duty to write the annexed remonstrance. He reminds the Governor that seven years before he had reported to the government at home the miserable condition of the women.(a) “Seven years have elapsed since that period, and your Excellency is *well aware* that no provision has yet been made for the female convicts to this very day; and that they are still exposed to the same ruinous temptations and hardships as formerly, with this difference only, that the evil has increased to the public in proportion to the increased number of females sent out from Europe.”

“No one,” he feelingly says, “was ever placed in so painful and trying a situation, as far as relates to the moral and religious state of the people committed to my care; I see them devoted to vice and infamy and extreme wretchedness while living, and when they come to die, suffering all the horrors of mind and anguish of spirit that guilt can possibly inspire,

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(a) Vide Appendix, No. 1.

without the means of applying any remedy to relieve their sufferings in either case."

I have already described the ordinary treatment of the women convicts in prison, the manner they are moved to the transport-ship, and the customary proceeding during the passage out. On their arrival in New South Wales, notice is given to the colony, and the women newly dressed and cleaned are turned upon deck to be chosen like slaves in the Bazaar, or cattle at Smithfield, though the most reputable and best conducted of these women may be taken as domestic servants, and bringing with them a fair character and recommendation from the captain of the vessel, may be hired as such, yet the greater part of those who are well-looking, are taken as prostitutes by the officers of the colony, or by those who have interest with the government to have the priority of selection. True it is, many of these women marry and turn out well. I could furnish a list of persons who are so situated, who having been the mistresses of the captain or officers of the ship, during the voyage, have obtained recommendations on their arrival, are now the mothers of families, and are living in a creditable manner. But these are the great prizes in the lottery: by far the greater part of the women go on the town, live on the town, and subsist in no other way. Mr. Marsden writes, "that the consequence of this system is, there is scarcely one female convict that will quietly go into the service of the most respectable families

in the colony, that they in the most open and positive manner refuse to obey the order of magistrates to that effect, preferring to live upon bread and water in a solitary cell, till they weary out, by length of time, the patience of the magistrate, and he knows not what measures to adopt to support his judicial authority, and to carry his necessary orders into execution."

The women, who are not hired as servants, are put into a boat, and sent across the Bay(b) to a species of workhouse at Paramatta, where they are employed in a sort of factory on the account of government. Here were in 1815; 160 women and 70 children. "There is not any room in the factory that can be called a bed-room. For these wretched beings, there are only two rooms, and they are over the yard, and both occupied as work-shops, being about 80 feet long by 20 wide. In these rooms 46 women were daily employed, 20 spinning wool upon the common wheel, and 26 carding; there are also in them, the warping machines belonging to the factory. These rooms are crowded all day and night; *such women sleep in them as are confined for recent offences*, amongst the wheels, wool, and cards, and a few others who have not the means of procuring a better abode. The hours of government labour end at three o'clock of the day, and

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(b) The carelessness with which this removal is executed, and the abominable scenes that take place, are disgraceful to any government that professes to call itself English.

from that time, till the following morning, the female convicts are at liberty to go where they think fit,—no less than 150 women sleep out. During the night they spread themselves through all the town and neighbourhood of Paramatta, and some of them are glad to cohabit with any wretched man, who can give them shelter for a night. Hence the male convicts *nightly rob or plunder, either government or private individuals*, to supply the urgent wants of the females, who are devoted to their pleasures. On this account, there is not a bushel of wheat, or maize in the farmer's barn, nor a sheep in his field, nor a hog in his yard, nor even a potatoe, turnip, or cabbage, in his garden, but what he is liable to be robbed of every night he lies down in his bed, *either by his own, or his neighbours' servants.*" Such are the results of the orders issued by Lord Castlereagh in 1809, and the engagement entered into by the Governor to obey them in 1810. Would it not have been better to have built a house for the reception of these poor wretches, than a palace for Mr. Darcy Wentworth, the surgeon-general, and two other similar edifices for the two assistant surgeons? Would it not have been better than the construction of temples around pumps, and all the fopperies and follies which have been recently erected. By another proceeding of Governor Macquarrie, it would seem, he was not only determined to build a large hospital, but to fill it also with sick. Heretofore all



ardent spirits brought to the colony were purchased by the government, and served out at fixed prices to the officers, civil and military, according to their ranks; hence arose a discreditable and gainful trade on the part of these officers, their wives and mistresses. The price of spirits at times was so high, that one and two guineas have been given for a single bottle. The thirst after ardent spirits became a mania among the settlers; all the writers on the state of the colony, and all who have resided there, and have given testimony concerning it, describe this rage and passion for drunkenness as prevailing in all classes, and as being the principal foundation of all the crimes committed there. This extravagant propensity to drunkenness was taken advantage of by the Governor, to aid him in the building of the hospital. Mr. Wentworth, *the surgeon*, Messrs. Riley and Blaxwell, obtained permission to enter a certain quantity of spirits,—they were to pay a duty of five or seven shillings a gallon on the quantity they introduced, which duty was to be set apart for the erection of the hospital. To prevent any other spirits from being landed, a monopoly was given to these contractors. As soon as the agreement was signed, these gentlemen sent off to Rio Janeiro, the Mauritius, and the East Indies, for a large quantity of rum and arrack, which they could purchase at about the rate of 2s. or 2s. 6d. per gallon, and disembarked it at Sydney. From there being but few houses that were before per-

mitted to sell this poison, they abounded in every street; and such was the enormous consumption of spirits, that money was soon raised to build the hospital, which was finished in 1814. Mr. Marsden informs us, that in the small town of Paramatta, thirteen houses were licensed to deal in spirits, though he should think five at the utmost would be amply sufficient for the accommodation of the public. The effect then of this wicked experiment, was the destruction of hundreds of convicts. I am informed, the burial-ground became like a ploughed field, and that the loss of life was prodigious. As usual, there is no account of the deaths, births, and marriages, so no correct estimate can be formed of the extent of the evil produced, or of the injury the government sustained by the death of so many of its subjects. The death of those poor deluded and ill-treated wretches was perhaps a blessing to themselves. What is the lot of the survivors? I ask, what must be the sum of vice, misery, disease, want, prostitution, sufferings of children, robberies and murders, that have resulted from this proceeding? and if it can be reckoned up, judge if I am erroneous in thinking the slaughter of so many of our fellow-creatures the least part of the evil.

Here then we have a full and complete testimony of the extent and degree of reformation, which takes place in New South Wales; not only the females are turned loose on the town, no place of

residence being provided for them, but all the persons in the government employ at Paramatta; the mechanics, and those engaged in various descriptions of public labour have no houses. Formerly the case was different, and fixed places of abode were found for them. The change in this practice promises the greatest evils; hence the commission of all species of crime—the difficulty of discovering their authors; and “it often happens, that when offenders are brought before the magistrates, they plead this very neglect as an excuse for their conduct, and make strong appeals to the mercy and feelings of the magistrates, stating the extreme hardship they labour under, in having no accommodation provided where they can dress their food and lodge at night; this plea is often admitted, and *thus the guilty escape the punishment which their offences warrant.*” (c) Compare then the difference between transportation to Botany Bay and to the North American colonies. Under the old system there was great injustice and inequality, the rich suffering the punishment of simple banishment, whilst the poor had superadded that of personal slavery; but the chances of reformation were great in the former system, they are altogether unfavourable under the present. A convict sent out to America was dropt as it were amidst a mass of society in its customary moral state; he was placed in a family interested in the conduct of its

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(c) Vide Appendix, No. 1.

new member, watchful for their own interests that he should become honest and industrious, and lending to their efforts the effects of example ; working under the eye of a master, he had neither the opportunity nor the temptation to relapse into his old faults, and if there remained in his heart one sentiment of honesty and good feeling, the treatment he experienced was calculated to draw it forth.

Hardly any circumstances so favorable to reformation exist at Botany Bay ; there are few families such as existed in North America, into which a convict can be placed. Governor Bligh states, that in 1807 there were only 166 free men who had never been convicts, whom he considered as competent to serve as jury-men, and to fill any office of trust. (a) That list may be at present more numerous, but in all events the number of respectable families can in no way amount to that which was to be found in North America. The convicts too, sometimes live five or six together ; this arrangement, with the forlorn and deserted condition of the male and female convicts in the employ of government, let loose as they are after the hours of work upon society, the almost entire absence of all inspection, excepting only that of the police rounds, which is uncertain, incomplete, and occasional, can afford no preservative against hatred of work, gaming, drunkenness, licentious

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(a) House of Common's Report, p. 40.

manners, and irregular intercourse. What can be the respect entertained for the moral purity of enfranchised felons, who have gained their freedom by working out their punishment? what power can authority hope to hold over a society, where there exists a permanent and general combination to resist its ordinances and defeat its regulations? yet it cannot ever be forgotten, that however bad and irreclaimable the convicts may be, the testimony of Mr. Collins is decisive against the character of the enfranchised settler. Whatever may be the degree of vice supposed to exist in the convict, he is only half as vicious, drunken, and dissolute as he, who having worked out his time, remains in the colony. He says, that for the first five years, some hopes were entertained that the convicts might be reformed; but as soon as those who had served their time increased to any number, not only did the emancipated indulge in every excess, and perpetrate every crime, but were the chief instigators of all revolt, the receivers of all theft; they furnished hiding places to offenders, and in many instances flying to the savages, stimulated them to acts of outrage, murder, and incendiaries on their less criminal countrymen. (b) Governor Macquarrie informs the English government, that the whole population of the settlement attend church regularly. I should suppose that attendance is somewhat like what

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(b) Collins, vol. 2. p. 57.

takes place in London, where probably not one-tenth of its inhabitants are, from want of room if they had the inclination, enabled so to do. I believe there are but three churches in the settlement, and the population, according to the return annexed, surpasses 15000 souls; but whether the attendance be great or small, little good seems to arise from these outward shews of religion. Mr. Marsden has made us acquainted with the moral improvement of the colony, and the fruits of this extensive attendance of Divine worship are, "that under the circumstances of the colony, no man of common feeling, possessed of the least spark of humanity or religion, and filling the civil and spiritual situation he does, can enjoy one happy moment from the beginning to the end of the week."

The third and last quality of the punishment of transportation, which I shall examine, is its

#### ECONOMICAL.

This may be divided into three heads; economy of men—of punishment, and of money. It may be considered by some as mere idleness and waste of time, to designate as a loss the transportation of such a portion of the young and healthy population of the country; but it is not to be forgotten that this is a loss, not only of persons in a vigorous state of body, but generally of considerable sharpness of intellect and power of understanding; the talents of these offenders may have been mis-conducted and misapplied, but they still exist, and are

to be taken as a loss to the country which is deprived of them. It may be indeed said, that the very abuse of these gifts, is the reason why the law considers those who so conduct themselves, as unfit subjects to be under its protecting care at home, and that so far from the transportation of these persons being to be calculated as a loss, it ought to be set down as a clear gain to the nation. This, in some respects, may be true ; it may be the end to which an excess of population, beyond the means of feeding it, may lead a country, upon whom that visitation is inflicted ; it may be the natural consequence of twenty years of war, excessive taxation, and multiplied instances of misrule ; it may be the result of the breaking down of all the rotten and decayed parts of that fabric of law and custom, which we designate by the name of the administration of the country ; yet, whatever may be the cause or causes which produce this effect, until all the ways have been tried, by the removal of injurious laws and regulations which cripple the national industry, by the repeal of a system of penal legislation, which corrupts the morals, and neither protects person or property, until every way has been tried and exhausted to better the condition and improve the habits of the people, I for one, shall continue to look upon this forced emigration as discreditable to the age and country in which we live.

But there is also another sense in which the word *economy* is applicable.

The punishment to be inflicted ought not to contain in itself a greater severity than that which of necessity belongs to it, whatever goes beyond that line of demarcation, all superfluous pain has a direct tendency to bring the administration of justice into odium and contempt. When the legislature passed the strange act, which authorized the transportation to Botany Bay, it was done upon the plea, that the sentence contained only simple banishment from England, accompanied with bondage abroad, either for a term of years or for the natural life of the offender: this sentence comprehended two things. First,—the penalty for the offence; and second,—the application of that penalty for the purposes of reformation. It is perfectly clear that the law, or the law givers, never contemplated additional punishments which might be superadded, least of all would they have left these extraordinary pains to the mere chance, or to the caprice of the official servants in the colony, for they might fall heaviest upon the least guilty; even as the punishment is now inflicted, though there is no longer famine and disease to sweep away hundreds on their arrival at the place of their banishment, though the mortality on the passage is much reduced, yet it still exists, and the smallest negligence may lead to the most horrid disasters. I have been informed that a convict was sent with a typhus fever on board the *Three Bees*, which sailed from Cork in 1813, and such was the over-crowding and ill-regulated condition



of that ship, that it required the constant and unwearied exertions of the surgeon to keep the convicts healthy during the passage; 50 men died on board the ship *Surrey*, which received convicts in 1814, about 200 convicts sailed in her, so that the mortality, even making a large allowance for the number of her crew, may be taken to have been about one-sixth of those who were embarked.

In a report which I moved for in the House of Commons in 1817, which was made by the commissioners who investigated certain alleged abuses in the convict department at Cork, a scene is opened of neglect, oppression, and pillage, disgraceful to all the parties concerned. I shall content myself with one extract taken from a report made by the Captain and Surgeon of His Majesty's Ship *Tonnant*, who were instructed by Admiral Holloway, (to whose humanity and exertion the whole enquiry originates) to examine the state of the Sloop *Dumfries*, laden with convict women.

"We found on board 63 females. The accommodation for them is a space within the hold, 22 feet long and 16 broad, levelled with ballast and covered with straw; the straw has not been changed since the vessel left *Dublin*, and of course much broken and filthy. Amongst these convicts is one case of continual fever of a contagious character, and requiring to be *immediately* removed to obviate a general febrile affection. There are six other cases which require immediate medical attendance, and

whose situation is such, as to render their removal from the Sloop absolutely necessary. The Dumfries with these convicts sailed from Dublin on the 30th of January. This vessel arrived on the 2d, and though the convict ship was ready to receive them, they were kept in this state eight days.

*Feb. 9, 1817.* (Signed) JOHN TAILOR, captain.

JOHN GIBBS, surgeon.

Thus the punishment of transportation is liable to receive accidental augmentation to its severity. The law decrees a punishment of banishment to endure for seven years, and the practice under the law may be to inflict the pain of a lingering and cruel death by disease, by fire, by shipwreck; thus turning the justice of the country into a game of chance, a lottery, in which the robust in body and hardened in mind may win the prize and live, the feeble and the young lose and die. What should we say of a judge who addressed a prisoner in these terms, though a similar sentence is in fact pronounced every session throughout the kingdom. (c) "You are sentenced to lose your life by one of those 200 penal statutes, which affixes the penalty of death to the commission of certain offences; you may have been deserted by your parents, or seduced by them to commit the crime of which you are convicted; you may have been on the point of

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(c) Page 196, vol. 1. *Théorie des Peines et des récompenses.*

perishing from want of food, no matter the goodness of your plea, or the wretchedness of your condition ; the law is merciful in fact, though in terms it is cruel,—your life is spared ; but as you have not resisted the temptations by which poverty or youth are assailed in England, the law condemns you to the society of felons for the remainder of your natural life, in a country where vice and fraud abound ; and in order to make you reverence there, those institutions which you have violated here, you will find sitting on the Bench of Justice, those who once stood where you now are. Get you gone,—perish or prosper—pursue the career of crime abroad, which you have so well begun at home. The vessel which bears you from our shores, takes you from our recollection, we see not your miseries, and we shall soon forget you have ever existed.”

But there is another division of the economy of punishment, to my mind, the least important, but yet one which a rational and good government, will always attend to,—I mean the economy of money. It has been well said, that at all times the best plan of finance is to spend little ; and the financial situation of the country, is such as to demand the strictest parsimony. Besides, considering the distresses of the country, as the principal cause of the increase of crime, and the load of taxation, as the origin of those distresses, whatever economy is practised in any branch of the public expenditure,

would, by diminishing taxation, diminish crime. The 28th report of the Committee of Finance, estimates the expence of the various colonies planted in this quarter of the world, from 1788 to 1797, being a period of nine years, to 1,037,230*l.* or 86,435*l.* per annum; from 1798 to 1811, the cost has been 1,634,926*l.*, or 116,709*l.* per annum, and from 1812 to 1815, both inclusive, 793,827*l.* or 198,456*l.* per annum, being more than double the amount of the annual cost in the year 1797. That Committee reprobated the expence,<sup>1</sup> and with propriety remarked that, "after a trial of 12 years, it seems to them not too early to enquire, whether the peculiar advantages likely to arise from this plan, are such as may be considered as compensating for its probable expence? and to say whether any, and if any, what shall be the limit of the expence?" (2) The total cost of this colony from 1788 to 1815 inclusive, has been the enormous sum of 3,465,983*l.*

In the same report, the annual expence of each convict from 1791 to 1797 is calculated at 33*l.* 9*s.* 5*d.* per annum. In the evidence before the Transportation Committee, it is taken to be at about 40*l.* and the profits of his labour to amount to 20*l.*, but as no details are furnished the statement is to me of no value. The price paid for the transport of the convict is stated in 1812 by the Secretary to the Transport Board to have been on an

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(1) 28th Report, Committee of Finance.

average of the last five years at about 15*l.* 18*s.* 10*d.*, which would make the cost of each amount to 37*l.* exclusive of food and clothing; it however appears by an account laid before parliament, that in the year 1814, 109,746*l.* 15*s.* 9*d.* were paid for the transport: food and clothing of 1016 convicts, who were sent abroad that year, which will bring the cost to somewhat more than 108*l.* per head; the whole expences however of the colony have, according to the last return, much diminished, though they are still enormous. In 1812 they amounted to 176,781*l.*, in 1813 to 235,597*l.*, in 1814 to 231,362*l.*, and in 1815 they had fallen to 150,087*l.*

This subject can alone be investigated before a Committee with all the detail that it demands; many documents are wanting, and many enquiries are to be made, which have escaped the close and able investigation pursued by that Committee of Finance, of which the late Speaker of the House of Commons was chairman.

I trust such an enquiry will take place, and it is my intention to propose the subject to the consideration of the House of Commons.

The more however I look into this subject, the less am I surprised at this establishment having been such a favorite with all Secretaries of State of the colonial department, from the time of Lord Pelham in 1802, to that of Lord Bathurst in 1818.

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If the convicts had been confined in houses of

correction or penitentiary establishments—if any system but this colonial one had been adopted—the keepers of any, or all of these establishments, would not have been in the patronage of any office. In New South Wales, there are many snug and comfortable appointments, which no office can yield without a pang. Governor, deputy governor, surgeons, assistant surgeons, deputy provost marshal, surveyors of land, overseers, commissaries, &c. &c. &c.; indeed, I have lately heard of a fiscal establishment, which from the variety of its exactions, and the vexation of its enquiries, remind the unhappy trader of the ports of London and Liverpool.

I have thus shortly noticed the real situation of this colony; yet the flagrant examples of misgovernment, and the almost entire failure of the experiment as a place of reform, have been in no way as clearly demonstrated, as perhaps they are capable of being; even upon the evidence before the public, (but that evidence is so incomplete and contradictory) so much information is withheld, and in many of the most important subjects of enquiry, so few questions were asked; (a) that the person who is anxious to obtain information on these points, is compelled to hunt out his facts from a mass of contradictory testimony, and to infer more than prove. One thing is, however, demonstrated, that however profitable New South Wales may be to

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(a) Appendix (House of Commons's Report, 1812, vol. 1)

the war department as a place of patronage, and as furnishing means of influence, it entails on the country a considerable expence. Nor indeed is this half the evil :—joined to this loss of money, is the knowledge that the New England we have formed on the other side of the globe, is little better than a deposit of all the vices and crimes which have been, and are the scourges of the more civilized inhabitants of the mother country. There are however some few instances of mismanagement, which for examples sake I shall recapitulate : the circulation of them, and they cannot be repeated too often, may prevent their re-adoption ; and though I can hardly believe that this country can ever again be governed by men so utterly regardless of her interests, so ignorant of sound and rational colonial policy, as that another New South Wales can ever again be planted ; yet there is some satisfaction in the thought, that our duty has been performed, if the eyes of the country are by the review of the past turned to the consideration of the future. It is not necessary to do more than enumerate the offences committed, such as the misconduct of all persons, from the highest to the lowest, (b) the illegal appropriation of land, (c) the unjust profusion of pardon, (d) the monopoly of all

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(b) Vide Collins in almost every page ; House of Common's Report, 1812.

(c) House of Common's Report. (d) Ditto.

articles of trade in the hands of the civil and military officers of the colony, (e) the absurd regulation of trade, and the limitation of the price of labour, the imposition of a maximum on corn, (f) the Governor settling the price, while taking into the stores three-fifths of the whole produce, (g) the selection of improper persons to fill the different offices, (h) the appointment of convicts to officiate as magistrates, (i) the open and avowed encouragement shewn to men, whose character is far from being even problematical; all these things have filled to the brim the cup of abominations of this felon settlement, and I understand even his Majesty's minister have at last determined to enquire into the subject. What indeed can be said of a system of political economy, in which the prices of grain and butchers' meat, and of labour, are fixed by the government; (k) the heads of which the Solons and Lycurgus's, of this new world, were three sea-captains and one major-general—the government itself a trader, (l) its civil and military officers retailers of all articles of commerce, constituting of necessity a rule of extortion in all the necessities of life; (m) where the circulating medium was of copper, where individuals issued notes, varying from 5*l*.

(e) House of Common's Report.

(f) Ditto.

(g) Ditto.

(h) Ditto.

(i) Appendix Ditto.

(k) Ditto.

(l) Ditto.

(m) Vide Appendix 2.



to us, where wages were paid in spirits! To talk of trade is an idle mockery. Governor Macquarie himself allows that there are no regular supplies by merchants, but the government is a dealer in all articles of consumption. (Why, I ask, are there no regular supplies by merchants? Is it not because from this absurd and arbitrary conduct of the government of this colony, no rational man will expose his property to their contrab; to think of commerce under these impediments and obstructions, is as wild a speculation, as to expect reformation among the felon settlers of this New Newgate. A profitable commerce, a thriving colony, are driven and made, by patient industry, by being let alone by the government where they are establishing, meddling in no way, but by affording protection against the very spoilers and robbers, who form nearly the whole people, the mass of consumers in the settlement in question. Read the history of our commerce; look back to the foundation of colonies, they have been made by the Moravians, by the Quakers, by conscientious men, who flew from persecution and slavery, that home, by sober, religious, patient, industrious beings, who laboured hard and suffered cheerfully the greatest privations; these are the men who have built up flourishing colonies and great empires, who have sown in sorrow, but who have reaped in joy. The Buccaneers, who are alone to be compared to this colony of felons,

though enriched by pillage and piracy, have disappeared; and have left no trace of their existence but the record of their crimes.

There are three other great grievances existing permanently in the colony. 1st. The detention there of persons, whose terms of punishment are expired,—this fact is not even attempted to be denied,—it has existed from the earliest periods of the settlement. What can we think of a government that could, with a knowledge of the circumstance, let this crying evil continue 12 months? I ask then, by what law they are detained one hour? What should we say in England, if any keeper of a prison was to detain his prisoner even the shortest time after he had a right to be discharged? What did we in fact do when it was proved before parliament that both debtors and criminals were occasionally detained in prison for non-payment of fees, which were a legal demand on the part of the gaoler? Why the legislature passed an act abolishing all the fees, the remedy was complete, and thus every person at the expiration of his punishment, or discharge of his debt, is set free. But the government at home send hundreds of persons annually to New Holland; and not only provide no means for their return, but the regulations there, by compelling the captain of every vessel to enter into an engagement to take no person on board without a pass from the Governor, have thrown additional impediments in the way of those whose terms are up, and who

wish to return to their native country. I shall be told of course that this pass is never refused; I ask, by what law it is demanded? and as to it never being denied, Mr. Collins informs us of many severe floggings being inflicted on unhappy persons who had worked out their terms, and who had taken their passage home on board the different ships. These free men, for free they were as the Governor himself were taken by force from the ships and barbarously flogged. By what law, statute or common, was this act done? yet who has been called to account for these atrocities? To be sure the courts of law were open, but the forlorn and emancipated felon, thus prevented from returning home, and tortured because he exercised a right he possessed in common with every free-born Englishman, could not have the means to bring his oppressor to punishment. This is a subject not agitated now for the first time; all the early commotions in the colony arose from this illegal detention. But granting only for the sake of argument, though I do not believe the fact, that this pass is never denied, but given on the first application, and the person so obtaining it wishes to return. How is he to do so? If young, healthy, and strong, he engages himself on board a ship and works his passage home, but if he cannot so labour, either from want of health or strength, he is doomed, against his will, to remain in the colony for life. It is in evidence before the Committee of the House of Commons, that hundreds of enfranchised convicts

were in that situation. (a) If this free person be a woman, she has confessedly no means of returning home, but by the prostitution of her person to the officers or sailors of the vessel which carries her; that this is the common practice, all the witnesses examined upon the subject are agreed; (b) but if the poor wretch is aged, and has lost all her personal attractions, she is a prisoner for life; and the same authority states, that there are many women in these circumstances who would, if they could, quit the colony. (c) Some few however procure a passage, attending families as servants, who are returning to England. In a dispatch written by Lord Bathurst to Governor Macquarrie, dated November 23d, 1812, mention is made of a determination on the part of the government, "to give effect to that part of the report, of the Committee of the House of Commons, which relates to the return of female convicts to their native country, at the expiration of the period of their sentences, as soon as a return shall be received of the number of such persons, for which the government may annually be required to provide." What then has been done under this determination? Has this promise been kept? How many female convicts, whose terms have expired, (free persons in 1813-14, 15, 16, and 17,) have been brought home at the expence of government? I ask, if *one* has yet been landed,

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(a) Appendix House of Common's Report, 1812.

(b) Ditto

(c) Ditto.

under that pledge, in her native country? Is it not; on the contrary, true, as I am informed, that no more has been done under that dispatch, than under that of Lord Castlereagh, in 1809? What becomes then of the boasted justice of English law? for the most trivial crimes persons of both sexes are sentenced to seven years transportation; many have actually been transported for first offences, the crime being the theft of something valued at ten-pence, and the real punishment they receive is the same, which is practically inflicted on the worst offenders, whom the mercy of the crown spares from public execution. It is no answer to this, to say, that to all persons willing to become settlers in New South Wales, the government there gives a considerable portion of land. What can a girl of 20, or a woman of 70, do with the land when they have received the grant? And supposing these free persons wish to return home to their husbands, or wives, or families, children or friends, what value is 40 acres of unbroken, uncleared, uncultivated land; when placed in comparison? What value is such a property in such a place, when attended by the deprivation of *home*, simply *home*, detached even from the ties which many of these poor creatures have to endear it to them? It is high time to have this culpable negligence remedied, and I trust parliament will not again separate, without some steps being taken to force the subject on the attention of the government.

The second great cause of grievance is the assump-

tion of power on the part of the Governor to levy taxes. I enquire again, under what law does he levy one shilling? I have read over the powers which his Majesty's government have, legally or illegally is not the question, invested him, but I can find nothing to authorize the imposition of a single tax, on either foreign or internal consumption, on exports or imports, for any purpose however plausible, to any end however salutary. (c) My question is, under what law does he venture so to act? It is no answer to say, that he does these things, because other governors have so done from the earliest plantation of the colony;—the antiquity of abuse does not render it sacred—precedents of illegality only prove that similar acts of injustice have been practiced before. This question cannot be now proposed for the first time. The succession of law officers, and there has been enough of them to give good or bad advice to the crown for the last 28 years, must have mooted the subject. As I have never heard or read of a satisfactory answer to this constitutional question, I shall take the liberty of attempting to raise some doubts as to the legality of the

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(c) There is however a letter from Lord Liverpool to Governor Macquarie, dated 10th March, 1812, directing him to impose a duty on spirits of not less than four shillings per gallon. By whose authority was this written? by that of the privy council? but the privy council have no right by law to tax Englishmen; they might as well have ordered a poll tax.

practice, and shew, that according to the solemn judgments of courts of justice, all taxation is at present in those countries contrary to law.

Of course it is in the power of parliament to invest the sovereign, or his delegate in New South Wales, with such authority, but at present neither possess it—and all attempts to exercise it, however patiently borne, or long submitted to, are illegal.

It is not necessary to enter into a long legal argument, or to recapitulate those which were so ably stated in the three days' discussions, that took place before Lord Mansfield, in the great constitutional case of *Campbell v. Hall*;—the point at issue there, and determined in favour of the plaintiff against the crown, has no direct application to the case of New South Wales. But it was agreed on by all sides, acknowledged by the Chief Justice, and assented to by the court, that in the case of the plantation of a colony, the legislative power is not in the King alone, but in the King and Parliament of England.

It is true, that the plantation of New South Wales can hardly be considered as an ordinary colony; but it was no conquest—it was not a territory taken from any enemy—there could be no plea of a right of capture set up; if even that plea could ever stand a regular and solemn judicial argument, which I much doubt, no surrender has been made by any savages to any commander. Benilong, and the other barbarian who visited England, came not as ambassadors—they made no capitulation—there



were no laws and liberties to preserve—no customs to keep inviolate—our possession was the simple occupation of a territory almost unoccupied, and over which a few naked savages ranged. By what laws then, were the Englishmen, so sent out, to be governed? clearly by no other but by the laws of England. By all of those laws which were applicable to their situation—by the civil law as affecting their property—by the criminal as guarding the safety of their persons. The crown, however, exercising a prerogative, which no one disputes the possession of, thought fit to issue a commission for establishing courts of justice in New South Wales; (d) thus the crown did not legislate, but only directed in what manner, and by what species of court, laws, already in force in the mother country, should be administered: it could not, for instance, have made a misdemeanour at home a capital offence abroad; nor could it have commuted the penalty of murder for the payment of a sum of money; though the principal inhabitants of the new colony were convicts, their labour only was the property of the crown; it was so by act of parliament, and no power existed in the King to take away their lives, except by the known laws and statutes of England. Upon the question of punishment I shall have some remarks to make

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(d) This commission was however named by statute 24 Geo. III.



hereafter. At present I shall only observe on the absolute power of the Governor of New South Wales;—he can levy taxes at his own will and pleasure. If he lays an impost on imported or exported articles, why not raise money by assessed or property taxes?—It is not the amount of the money raised, or the weight of the tax,—it is the principle that is to be attended to. Mr. Burke well says, the payment of 20 shillings, would not have injured Mr. Hamden's fortune, but it would have made him a slave, and therefore he resisted it. I trust some person will be found in New South Wales to refuse the payment of these imposts, and try the question with the government. A more audacious and illegal act never was perpetrated, and I am astonished at the supineness of the English parliament upon the subject. To be sure, precedent of this similar usurpation may be found, but when exposed, the tyranny was put down. In King James the First's time, the aim of the government was to establish, as a principle, that all the appendages to the crown rested on the sole will and pleasure of the King; a discussion arose in parliament upon the colony of Newfoundland. The Secretary of the State of that day, objected to the interference of the parliament. "What have we to do with America, (said he) they are plantations,—they belong to the King." But, Sir Edward Coke and Mr. Selden replied, what, "when the King grants letters patent to them under the great seal, are they

not part of the empire, and shall we not interfere?" (c) But it is not the breach of privilege and invasion of the right of the settlers of New South Wales, that is alone to be considered; it is the attack on the English constitution at home, in which we have, as a free people, so great an interest. If the King can levy taxes at his sole will and pleasure, he can dispose of the proceeds in the same manner;—they may form a portion of the privy purse—they may swell that shameful source of revenue called the *droits*,—and be employed to corrupt the members of the House of Commons. We all know what the ministers of the crown will do for money; and the history of the *Smyna* fleet, and the capture of the Spanish frigates, cannot have escaped our recollection.

An attempt to raise money in Jamaica in 1772, was refused by the assembly of that Island. It was referred to Sir Phillip Yorke and Sir Clement Wearg, the Attorney and Solicitor-Generals of that day, and of course interested to push the prerogative of the crown as far as possible; they gave a decision, the first part of which I do not believe to be law, but the second part is decisive upon this subject; their answer is, "that if Jamaica was still to be considered as a conquered country, the King had a right to lay taxes upon the inhabitants, *but if it was to be considered in the same light as the other*

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(c) House of Commons's Journal, April 26th, 1761.

*colonists, no tax could be imposed upon the inhabitants, but by an assembly of the island, or by an act of parliament. (f)*

Lord Mansfield, in his decision on the Grenada case, entertained no doubt of the correctness of this opinion, and in his positive manner affirmed the truth of both propositions. Subsequent discussions have shewn the weakness of the first part of the opinion, and if disputed in our courts of justice, notwithstanding the just weight which the opinions of so great a lawyer would have, I cannot think they would be deemed sound law. But for one, I do not entertain any great reverence for legal authorities in any case between the crown and the people. The observations of Mr. Sergeant Glynn are of high value upon this subject; he expressed himself on the trial, as not to be deterred by great opinions, when he considered by what authorities the liberty of the press has been opposed, by what authorities the claim of ship-money was supported, and what the event was upon both those questions. (g)

But even if there were precedents in point to warrant this assumption of legislative power unexamined, undisputed, and undecided, upon solemn judgment by the courts of law, I should not be

(f) Cowper's Reports, vol. 1. *Campbell v. Hall*.

(g) State Trials, *Campbell v. Hall*.

disposed to set any very high value on such authorities.

If a few instances of the exercise of arbitrary power by the ancient kings of England are to be received as decisive cases to show what are the powers of the crown at this day, I think it would be no difficult task to find authorities even as low down as the reigns of the Plantagenets and Stuarts, to prove that the British government ought to be a pure despotism. (c) No Englishman can ever forget the case of general warrants—an uninterrupted continued exercise was shewn of the practice—the precedents all taken from good times, from the period of the Revolution; and yet, as the issue of these warrants was contrary to the true spirit and meaning of the English constitution, they were declared illegal. It is no question here, if the money levied by taxes builds hospitals or goals—makes roads or sea-ports—is employed in the best, or in the worst manner; the whole matter in dispute is, the legality or illegality of the levy. At first, while this colony consisted of a few thousand persons, mostly convicts, and a few military as their guards, no trade but what was carried on by the government, and the whole settlement, like a rickety infant struggling for life, the question of “the right of taxation,” was only of importance as a constitutional one. At

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(c) State Trials, Campbell v. Hall.

present by a return which I subjoin, to as late a date as October, 1816, there were no fewer than 15,175 souls in the colony; 11,696 may be taken independent of the civil and military establishments as free persons. If a recent account can be credited of 1817, it gives 20,379 persons as the population of the settlement, out of which are to be deducted, 7,290 convicts—men, women, and children, which leaves a balance of 13,109 free persons. Thus, then, 13,109 Englishmen, all born to, or all enjoying now, in fact, the rights and liberties which belong to that name, are deprived of their birth-rights, and are compelled to submit to a tax levied by other authorities than their representatives in parliament.

The free inhabitants of this colony complain of this act of arbitrary power; but I complain of it too, not only as a violation of the constitution, but as demonstrative of the disposition of government to get rid (whenever an occasion arises) of those checks and legal restraints, which the wisdom and valour of our ancestors imposed on the crown of these realms.

The third grievance, is the arbitrary and illegal mandates of the Governor.

By the royal commission establishing courts of justice in New South Wales, bearing date the 6th of December, 1786, it is set forth, that “Whereas, by an act of parliament passed in this year, his Majesty may authorise the Governor to convene

from time to time a court of judicature for the trial and punishment of all such outrages and misdemeanours *as if committed within this realm* would be deemed and taken *according to the laws of this realm*, to be treason, or misprison thereof—felony or misdemeanor.” The commission then constitutes the court, and further directs “that after conviction, the punishment to be inflicted should be as nearly as may be according to the laws of that part of the kingdom of Great Britain called England;” and finally, it proceeds “to give all the justices of peace there the same power and authority as they have in this country.” In this commission there is not one word that constitutes arbitrary authority. True it is, there is no trial by jury, but courts martial are substituted in its place; yet Governor Bligh informs us, these were colonial regulations, made upon subjects where there were no British laws, and upon which the conviction went as far as 500 lashes. (d) Here again, I ask, under what law were these regulations made?—not under the commission—not under the statute, for those offences were only to be punished which were punishable by the law of England;—this power then is illegal,—is it otherwise than pure despotism? I do not deny that many of the regulations made were wise, and in the state of the colony highly salutary, until

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(d) Appendix, House of Common's Report, 1812.

a law could be passed at home to invest the Governor with such authority, the exercise of sound prerogative, warranted the making of them; but this is not a tyranny of 40 days, of which we have heard of, but a tyranny of 28 years; and up to this moment the Governor exercises the power of issuing orders, and of enforcing them by the whip upon free men for offences, which are not offences by the English law. I presented last year and the year before several petitions to parliament, from persons who had actually been flogged, one, if not two of them free men, who had never been convicts, for having been found within an inclosure, which Governor Macquarrie dignifies by the name of a park. It is not necessary to go into any detail of the illegal acts committed, and the illegal ordinances issued. Mr. Bentham(e) has divided them into seven heads, and has cited examples of each. First, security against scarcity and famine.—Secondly, security against depredation from within.—Thirdly, security from depredation from without.—Fourthly, security against accidents by fire.—Fifthly, prevention of drunkenness. Sixthly, enforcement of attendance on divine worship.—Seventhly, prevention of emigration, whether on the part of non-expirees or expirees, or both together without distinction.—By far the greater part of

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(e) Vide "A Plea for the Constitution."

these regulations were necessary, some were however rather violent; such as in 1793, "Notice by the Lieutenant Governor—Any person attempting to sell spirituous liquors without a license, might rely on its being seized, and the house of the offending parties pulled down." (f) But the forcible detention of those whose sentences had expired, the continuance of them in bondage, the flogging them with great severity,—how can these enormities be justified? by what law can they be warranted? How much, or how little of these violations of the law of England take place at present I know not; that many do I make no doubt: it is in the nature of unchecked, uncontrouled power, to be abused, and what privilege of exemption the government of New South Wales at the Antipodes should claim over that of the mother country, I am at a loss to conjecture. It is high time the question should be determined, and that 20,000 English inhabitants should be placed under the laws of England, and in the maintenance and enjoyment of their rights and privileges.

There are many other grievances in the administration of this colony, to some of which I shall shortly allude.

Of late years a new court of justice has been established, which by lessening the absolute power



of the Governor, affords some chance of justice to the suitor. But even here the influence of the bad system adopted was made manifest. One of the colleagues to the chief justice of the supreme court is Mr. Davey Wentworth, surgeon-general, principal police magistrate, who has once been a convict. No one can doubt of the impropriety of this nomination on the part of Governor Macquarrie, and its effects were shown at the first meeting of the court, when, I have been informed, several convict solicitors appeared with briefs to plead, the chief justice refused to hear them, the two other judges, one of them naturally enough decided they ought to be allowed to act as solicitors, although their names had been struck off the rolls in England; the chief justice was inflexible, the court adjourned till the King's pleasure could be known, and whether the white-washed and newly baptised regenerated solicitors, the virtuous Messrs. Crosley and Robinson, plead at the bar, or act as solicitors before Mr. Justice Wentworth is more than I am able to determine. Mr. D. Wentworth may be now a very honest man; I hope he is so, and do not know the reverse; but I am sure justice ought to be pure and unsullied, and no man is fit to sit on the Bench, who can be openly reproached as having been once a convict by the criminal he is trying. Nothing but a bold determination to govern absolutely, and contrary to even the laws of New South Wales, could have led to the nomination of

this person as judge, and other persons in a similar predicament as magistrates. All the witnesses who were examined before the Transportation Committee, speak of the appointment of a jury system as indispensable. Governor Bligh, Admiral Hunter, both having been at the head of the colony, insist upon its necessity; they declare the colony to be ripe for it, and that a sufficient number of proper legal jurymen can be found. Governor Bligh says distinctly, that in his opinion decisions would *have been fairer* if the institution of juries had existed. Admiral Hunter affirms, that the decisions of the courts were complained of, *and many of the most sensible and knowing of the contractors*, very often could anticipate the sentence of a criminal that came before the court. (g) The Committee of the House of Commons regard the introduction of the trial by jury as a salutary measure, and I cannot conceive why the measure is delayed; if it is so till the Governor of the colony consents to limit his own authority, by setting up the dominion of the law in the place of capricious violence, and the forms of a free government, instead of the mandates of arbitrary power, the same uncouth and unseemly judicial process will be continued till dooms-day.

The same Committee appear to have viewed this

absolute power, which is vested in the Governor, with the jealousy that became them as representatives of the people, and they accordingly recommend a council to be given to him, and that all authority should not be solely entrusted to his will and pleasure; of course this proposal is not relished by the head of the colonial department, Lord Bathurst, and equally, of course, Governor Macquarrie is disposed to consider such checks and limitations as a council would give to his authority, as dangerous to the existence of the colony; the result is, that no council has been named; and hence measures have been adopted which, I will take upon myself to say, no three men in the universe would have concurred in. If there had been a council, Governor Macquarrie would not have been enabled to make pardoned convicts justices of the peace; he would not have been permitted to destroy the convicts by the introduction of spirits, and by the authorised sale of them at the corner of every street; nor would he have presumed to impose arbitrary duties on all articles of imported merchandise, in order to build palaces for surgeons, and temples round pumps.

Is it then necessary to say more against an establishment, than what has been urged in the pages which I have submitted to your consideration?—Reformation the purpose, corruption the result, arbitrary power in the government, discontent in the people, and a colony of Englishmen without

morals, liberty, or laws. Such are the triumphs of English legislation in the eighteenth century of the Christian æra, in the course of which America, managed under another system, and peopled by a class of men who were neither felons nor outcasts, has swelled from a small community, hardly reckoned in the commonwealth of nations, into one of the richest, happiest, and freest people in the universe.

It is by no means, however, my intention to advise the abandonment of the colonies of Botany Bay and Van Dieman's land; these ill-fated projects have cost above three millions sterling; above 20,000 Europeans are settled there; these colonies are in a state of improving cultivation; and though I am less sanguine than others as to their ever being (at least within the compass of any calculable time) of great colonial advantage to the mother country; yet the vast unexplored territory they contain, the recent account of the discoveries made, their fine climate, and not unfruitful soils, all combine to make me unwilling to abandon even these forlorn establishments to the enterprize of other nations. The question which I alone shall consider at present is, what further use shall be made of them? Shall they continue to be the nursery of English felons? It is quite evident, that as long as this enormous importation of felons continues, two events will take place,—the one an unwillingness in colonists of a different description attempting at all to settle there,—the other, that greater difficulties

will be thrown in the way of moral improvement and reformation, in as much as few, if any person in the colony, will be otherwise than convicts or enfranchised convicts. I wish, therefore, to propose to your consideration the propriety of limiting the transportation of offenders, to those cases where either sentence of death is passed, to be afterwards commuted for perpetual banishment, or where the law itself directs transportation for life. All cases of 14 and 7 years, to be detained at home, and provided for by regulations of imprisonment and labour, which a well understood system of prison discipline would soon find easy to accomplish. It appears from parliamentary returns, that from 1805 to 1817 inclusive, 380 persons were sentenced to transportation for life, which is at the rate of 27 per annum ;—in the same period 7176 persons were sentenced to death, of whom 938 were executed, leaving 6238 who were transported for life, being at the rate of 479 per annum ; so that taking into an account even the increased rate of crimes, it may safely be calculated that between five and six hundred convicts a year would be the maximum of transportation. (d)

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(d) Though I have taken into the calculation the enormous increase of the year 1817 above any other year, yet I consider that even to have arisen from the distress of the people, and not at all as permanent ; but that a fair estimate of what probably will be the number of transportable convicts, may be found by the average of the last 13 years.

I shall not here discuss the nature of those penal laws, the severity of which no one now disputes, and on account of which they are condemned by all enlightened men, however much the continuance of them may be justified, by shewing that in fact the sentence of the law is only executed in one case out of 11 or 13. These are subjects which have been so ably and so eloquently treated in the pamphlet of my revered and lamented friend Sir Samuel Romilly, and are so fresh in the recollection of every one, that it would be presumptuous in me to undertake a task which he had executed, or to think I could produce any effect where he had failed. It is, however, of some importance to show, for what offences a criminal may be transported, either by law, or by the practice under the law, from his family and friends, to such a country as New South Wales. The first introduction of the punishment of transportation was in the reign of Queen Elizabeth; but it seems to have taken place, more nearly as now practised, about the time of the Revolution.<sup>(c)</sup> It was unknown to the common law, but has been enacted by statute, and has received various alterations and limitations, the details of which it is not essential to the purpose I have in view to examine. It is enacted by 4 Geo. I. ch. 2, "that where any persons shall be convicted of grand or petit

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(c) Williams's Justice, vol. ii. 2 Hawk.

larceny, or felonious stealing of money or goods, and who by law shall be entitled to the benefit of clergy, it shall be lawful for the court before whom they were convicted, to order them to be sent to his Majesty's plantations in America for seven years."

By the 19th Geo. III. ch. 74. "Any person may be sent to any part beyond the seas, if convicted of grand or petit larceny, or any other crime for which he is liable to be transported to America." I refrain too from attempting to enumerate the different offences for which a person can be transported:—first, because I really do not know how to set about the task;—and secondly, because by a reference to a common law book, such as Williams's Justice, it will be seen that he has devoted no less than 38 pages to this subject. It may be sufficient to select a few instances of severity.—All persons wilfully aiding, or abetting, or assisting in cutting down trees or shrubs in the night time—assaulting the keepers of deer—officers of excise—damaging of nine particular bridges—destroying rabbits in the night time—desertion even in time of peace—stealing fish out of rivers or enclosures—forging franks(*f*)—are all subject to transportation: in a word,

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(*f*) I do not recollect ever to have heard of a more flagrant instance of the severity of our transportation laws, than in the recent case of Dr. Halloran; he was convicted of forging a frank—the loss to the revenue is 10*l.*, and for that offence he is lodged with felons for months in Newgate—sent to the hulks, and finally, he is to be transported for seven years, to New South Wales. To aggravate this enormity, he is a person of

all persons who steal any thing under the value of 12d., are liable to that punishment. I have repeatedly known persons so sentenced, for the most

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talents and acquirements, and has a wife and a very large family of children. Is he too, to be sent on shore to heave ballast? and if not, what privilege of exemption has he over many others, whose education, and whose former situation, have placed them upon an equality with him. Is it not true, that there is at this moment a person who was an officer in the army, who now labours on shore with the other convicts? I beg to be understood that I do not wish this unhappy man to be so treated. It cannot be too often repeated, that it is not justice to inflict the same measure of punishment on persons in different situations. Equality of punishment does not mean inflicting the same measure of severity on all criminals, but in so selecting the choice of suffering, as to be able to fit it to the various classes of prisoners subjected to its operation, so that it should be the same to all. Hence, heaving ballast on the Thames, is no more than ordinary labour to the husbandman and common mechanic;—to the clergyman—to the gentleman—to well educated clerks—to the creditable tradesman—it is a punishment of another character and description.

I have no doubt I shall be told that the sentence of the law is inflicted on Dr. Halloran, because he is a person to whose charge many offences are laid—try him then for them—convict and punish him. But at present he is transported because he has a bad reputation. I object, however, to the law, but like other revenue laws of the same nature, it will be maintained at the expence of our natural feelings of right and wrong, and our sense of political justice. As I do not know all the circumstances of the case of Dr. Halloran, I can give no opinion of his merit or demerit; but of this I am sure, that the treatment he has received, the punishment he has already undergone,



trifling offences. Children for stealing a broom, a pewter pot, or some such trifling article; and no one can read over a calender without being struck with the severity of the sentences, when contrasted with the trivial character of the crimes. I have several times attended as justice of the peace for the quarter sessions of the counties in which I so act, and I have seen repeatedly sentences of transportation passed for offences, which, to my mind, at least, three months imprisonment, and hard labour, would have been ample punishment. Indeed, when I have objected to this severity, I have been told, that the law would not be executed, but that it would be commuted for imprisonment. Why, then, pass the sentences? but in truth it is inflicted, and there are hundreds of persons now on board the hulks, or who have been sent to New South Wales for offences, where, from the youth of the parties, and their former good character, they ought to have received either no punishment at all; (beyond the imprisonment they had suffered) or if it was deemed necessary to inflict punishment, at least it should have been one of the mildest form. There was a short time back, and I believe he is detained there at this moment by the kindness and

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and that which still impends over him, has excited but one feeling throughout all parts of the kingdom. When I recollect the mercy of the crown was extended to the notorious Bill Smees, I cannot help thinking it would not have been abused in being shewn to Doctor Halloran,

good sense of Mr. Brown, (g) a person who had distinguished himself as a soldier; he had served in the army 22 years, and had been a serjeant in his regiment 13 years and 6 months, he bore an excellent character, and was discharged at the peace—he fell into distress—could not procure work, and stole a broom, value 10*d.*: he was tried, convicted, and sentenced to seven years' transportation. These are cases of common occurrence; and because no blood is shed,—no sentence of death passed—these disproportionate punishments are inflicted with impunity; and on account of the dreadful rapidity, not to say indecent haste, with which persons are tried and convicted in the London and Middlesex sessions, pass almost without observation; yet, almost every one who is conversant with these transactions,

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(g) No one can visit Newgate without seeing the improvements made therein by this person. The defects of the prison are, the want of proper accommodation for every class of prisoners, and the consequent menal turpitude which is the natural result of this deficiency. The grand juries of London made no remonstrance on this evil; and thus, by their neglect of duty as far as their influence extends, impediments are thrown in the way of those who seek to remedy it. The officers of the prison are, in my opinion, attentive to their duty, and it is with the greatest satisfaction I can say, that in the visit I made there on Saturday the 23d inst. visible improvements were manifest in the appearance of the prisoners. The wise plan adopted at the recommendation of Mr. Box, (whose medical attention, and skill merits the thanks of his employers) in respect to the sleeping wards, has produced the most salutary effects.

except the perpetrators of them, lament their frequency, and deplore the lamentable effects which they produce. There is, and it cannot be any longer disguised, an opinion among the people at large, which is hourly on the increase, that the crimes and punishments bear no proportion to each other; hence judges, juries, and witnesses, break their oaths, and the judgments of the law, which, to strike terror, and afford example, ought to be certain, steady, and uniform—are varying, uncertain, and contradictory.

I have thus attempted to explain the nature and results of the law as it now stands, which inflicts the punishment of transportation on particular offences. I confidently ask, is the practice such as is wise or just? does it tend to diminish crime, or to increase it? to augment or to lessen the popular attachment to the administration of the penal law, and as such, to promote or to destroy the ends of justice? One answer can alone be given, and it must be acknowledged by all, that the system is radically vicious. Is there no remedy? I answer, there is; but the first step to be taken is to ascertain distinctly, and to arrange methodically, all the offences of which the law takes cognizance, and to specify the punishments which are annexed to each offence. The next is, to ascertain the opinions of men most conversant with the administration of the penal law as to its effects in practice. There would then be got together both the theory and the practice, what is ordained, and what is executed, and from the

union of these two kinds of knowledge the whole system may be recast, and penalties affixed to crimes more consonant, than those which exist at present, to the feelings of the age. This information can be obtained in no way so well as by a Committee of the House of Commons; and though the present house has lost its brightest ornament, yet there are men left in it, who would give the labour of sound understandings, and the knowledge of experienced lawyers and statesmen to this important subject. If I could once see such a Committee assembled, I should have no fear of the result of their labours; and the system, such as it is, with the errors and passions of centuries in its train, would soon be changed into one suited to the character of the times in which we live.

I hope also in this next session of parliament, Lord Lansdown will be induced to move for a Committee in the Lords—thus following up his successful motion of last year, for the production of papers connected with the state of all the gaols in the kingdom, and the accommodation for prisoners which they are able to furnish. When these documents, and the enquiries to which they will give rise, are before parliament, it then will be seen what are the wants of the public in the nature of prison-room and discipline. I entertain no doubt that the reformatory system, as practised in the penitentiary at Milbank, with some modifications, may be generally adopted, with the certainty of complete success. In the

supposition that the plan I propose of detaining at home all those who are sentenced to transportation for shorter terms than for their natural lives is carried into execution, it will be necessary to provide means for keeping them in safe custody, as well as the employment of them in all sorts of labour, in order to give those habits of industry, and that moral feeling, in which the hulks are so eminently deficient: it appears to me that there should be erected a certain number of district penitentiaries, the expences of which should be paid out of the national purse, and though the outlay might at first be considerable, it would not, in all probability, exceed that which is now annually paid to sustain the settlement of New South Wales. An establishment for 1000 persons would not cost more than from 40 to 50,000*l.*, and the maintenance of each prisoner, including the whole incurred on his account, would not probably exceed 20*l.* a head. This calculation is made upon the notion, that their labour is wholly unproductive; whereas, I entertain no doubt that the greater part of them might maintain themselves. The examples in America, at Ghent, at Gloucester, and above all, at Southwell, Nottinghamshire, must satisfy all impartial persons, that the subject can no longer be considered as one of experiment, but that it has fully answered, wherever it has been rationally and systematically pursued.

No difficulty could occur in the management and direction of these establishments: Independent of

the magistracy of each county, persons might be found, who would cheerfully and gratuitously perform the duty of inspectors and visitors; and it would be easy to devise a form of a return, to be annually laid before parliament, which would bring the state and condition of these institutions, both moral and physical, before the view of the country at large. In this instance there would be no difficulty in the detail; all that is wanted is, to find a corresponding disposition in the government to co-operate with those, whose zeal for the success of the undertaking is, most unfortunately, unaccompanied with the means of carrying it into effect.

The plan here recommended would, if adopted, not only relieve present distress, and remedy existing evils, but will be the means, under Providence, of redeeming the country from the stigma of raising up, in another quarter of the world, a settlement of criminals and free-booters. The misfortunes, the errors, and the crimes of our fellow countrymen, would gradually wear away under the operation of a system, which, while it corrects, improves, and unites the reformation to the punishment of the offender.

I remain, my Lord,

Your Lordship's obedient servant,

HENRY GREY BENNET.



Excellency Governor Macquarrie, and Deputy Commissary  
October, 1816, inclusive.

Prisoners Victualled.				Rations.				Persons not Victualled.				Total number of Souls in the Settlement.		
Men	Women at two-thirds	Children at one-half	Total of Prisoners victualled	Men at full	At two-thirds	At one half	At one-third	Total at full Rations	Total of Persons victualled	Men	Women	Children	Total of Persons not victualled	
758	67	73	898	1439	158	295	158	1850	2050	2144	1167	1334	4645	6695
317	167	89	574	444	217	225	72	727	959	882	374	534	1790	2749
143	6	6	155	360	65	102	40	467	556	1526	569	930	3025	3681
69	...	...	69	130	25	56	10	178	219	671	267	393	1331	1550
245	42	12	299	294	49	23	2	339	368	13	15	17	45	413
...	...	...	...	28	...	...	...	28	28	159	....	....	159	187
532	282	170	1985	2695	514	711	282	3589	4180	5495	2392	2208	11636	15175





## APPENDIX.



*Copy of a Letter from the Rev. Samuel Marsden, principal Chaplain of New South Wales, to Governor Macquarrie.*

Paramatta, 19th July, 1815.

**MAY IT PLEASE YOUR EXCELLENCY,**

I feel it my duty, as principal Chaplain and resident Magistrate of this district, to submit to your Excellency's serious consideration, the present state of Paramatta and its neighbourhood, as far as relates to its public morals and police. During more than twenty years residence in this town, I do not remember any former given period, when so many offences were committed against the peace, as there have been for some time past. House-breaking, highway-robberies, and other daring crimes have increased to a very alarming degree. Nearly the whole of my time, from morning to evening, has been occupied for some weeks, in examining the different complaints preferred before me. I humbly conceive these very great and serious evils to originate, principally, from the following causes, which, with all due submission, I beg to lay before your Excellency. The first observation I shall make, relates to the male convicts, a number of whom are employed at Paramatta by the crown as mechanics, and in various other public situations. These men have no barracks or huts provided for them by the crown, as formerly, where they can dress provisions and sleep at night, and be placed under the immediate eye of the police: on this

account, numbers of them are scattered all over the town and neighbourhood, and procure lodgings where they can amongst the lower order of free people, who live upon their vices, and become their protectors upon all occasions. It generally happens that these free people, when any theft is committed, will either, through fear or interest, cautiously conceal every circumstance within their knowledge, that would criminate the guilty who lodge in their houses, and by whose frauds, impositions, and thefts, they are maintained. The convicts in the employment of the crown, being at full liberty in the night to commit any depredations with impunity, in consequence of having no settled residences, and thereby form such plans, to prevent detection either before or after they have committed any crime, as no art or cunning can unravel. Hence the magistrate is compelled daily to discharge persons accused before him of various offences for want of evidence, though the most satisfactory conviction arises in his own mind of their guilt. I would further observe, that it is not uncommon for the convicts, when brought before the magistrates for theft, and their guilt established, to make very strong appeals to the feelings of the magistrate, by stating the extreme hardships they labour under, in having no accommodations provided for them by the crown, where they might dress their provisions and lodge at night, and that to obtain the means of defraying their lodgings, they had been compelled to make this and the other offence. When the magistrate is aware that their statement is correct, (so far as relates to their want of accommodations for sleeping, and there appearing a possibility that they would not have committed the crimes alleged against them under other circumstances,) the magistrate's feelings become imperceptibly interested in the prisoner's behalf, and his mind greatly perplexed how to act,—he knows the law admits of no plea for stealing, yet he often cannot punish. Hence the guilty seek relief on that divine rule of justice, "Do unto others as ye would they should do unto you." Thus the guilty pass with impunity, who under other circumstances would meet with that punishment their

crimes justly merit. I am fully convinced, that unless the convicts in the service are lodged in barracks or huts provided for them, and placed under the immediate eye of the police, there is no power or vigilance it possesses can prevent the commission of crimes of the most serious nature, and it will be equally impossible for the magistrate, when offences are committed, to bring the guilty to punishment.

The convicts at present having no settled place of residence, are accustomed to change their lodgings as occasion may require; so that, when a theft is committed, and any individual convict suspected, he cannot be found—he has changed his lodging, and no one knows where he is gone. This gives the criminal either time to conceal his stolen property, or to dispose of it, which is all that he requires, and by this means the ends of public justice are defeated. There are 75 convicts employed at the public works at Paramatta, under the superintendant Mr. Rouse, very few of whom have any place whatever to lodge in, and those that have, not being more than 60 in number, pay for their lodgings and fire, which, at a moderate estimate, cannot amount to less than from 10*l.* to 15*l.* per week. This sum they have little means to obtain but by theft; as few persons at Paramatta have any work for them to do, when they have performed the public work assigned them by government. A second cause of the present moral and political state of Paramatta and its neighbourhood, is the miserable situation of the female convicts in the service of the crown, and employed at the government factory. Numbers of these women are of the most infamous and abandoned characters, composed of the very dregs of the whole colony, being principally collected from the goal at head-quarters, and all the different districts through the whole settlement; many of them are a terror to the better part of society.

I need not state to your Excellency, that these female convicts have no more accommodations provided for them than the male convicts. During the night, these women spread themselves through all the town and neighbourhood of Para-

matter, and some of them are glad to cohabit with any poor wretched man who can give them shelter for a night. From the best information I can obtain, many of these females pay for their lodgings and fire, four shillings per week. Few of them have any means, except prostitution, to obtain this sum, and hence the male convicts weekly rob and plunder either government or private individuals, to supply the urgent wants of the females who are devoted to their pleasures. If this were not the case, the females would be left entirely destitute; for the lower order of free people neither could or would supply them with lodgings and other conveniences to dress their food, unless they could remunerate them to their satisfaction. The extensive illicit intercourse carried on under these circumstances between the male and female convicts, is destructive of all religion, morality, and good order, and destroys at once the most distant hope of any reformation being produced in either. Nothing can be more distressing to the serious, reflecting mind, than to see the vices and miseries of these abandoned females. When I am called upon in the hour of sickness and want, to visit them in the general hospital, or in the wretched hovels where they lodge, my mind is often oppressed beyond measure at the sight of their sufferings. Though their vices have rendered them loathsome to the better part of society, yet these females are objects of the greatest commiseration, from the certain miseries that attend them through a life of dissipation while here on earth; and if their dreary prospect beyond the grave be viewed in a religious light, it far exceeds in horror the utmost bounds of human imagination. As their minister, and one who must account ere long at the bar of Divine Justice for my duty to these objects of vice and woe, I see how they live and how they die! and often feel inexpressible anguish of spirit in the moments of their approaching dissolution on my own and their account, and follow them to the grave with awful forebodings, lest I should be found at last to have neglected any part of my public duty as their minister and magistrate, and by so doing, contributed to their eternal ruin? So powerful are these

reflections at times, that I envy the situation of the most menial servant who is free from this solemn and sacred responsibility, namely, the care of immortal souls. However, I am fully persuaded that whatever anxiety of mind I may suffer on account of this part of my charge, and whatever privations and hardships of body these females may also endure, no relief will ever be found for either, so long as the male and female convicts are necessitated to provide lodgings for themselves, and are at liberty to spend their nights in scenes of prostitution, robberies, and other vices, such as their corrupt inclinations or necessities may suggest. I beg further to remark, that these women, having no settled residence provided for them, they have no proper means of taking care of their weekly rations, and on this account their provisions are often stolen from them, so that many of them have nothing to eat for two or three days towards the latter end of the week; therefore they are urged by the calls of hunger to steal or to do things worse.

When I was in England in the year 1808, I represented to his Majesty's ministers the profligate state of the female convicts at the period I left the colony, which was owing at that time, in a great measure, to the want of a barrack for their reception, where the good could be separated from the bad, and an opportunity afforded to all those who wished to redeem their characters, and to return to the paths of virtue. I was assured by those in authority at that time, that this serious evil should be remedied by barracks being provided for them. His Grace the Archbishop of Canterbury, and other gentlemen in high official situations, with whom I conversed on the subject, considered the reformation of the female convicts of the first importance to the present and future welfare of the colony, and were convinced, that unless proper accommodations were provided for them, they never could be reclaimed from vice. Seven years have now elapsed since that period, and your Excellency is well aware that no provision has yet been made for the female convicts to this very day; and that they are still exposed to the same ruinous temptations and hardships as

formerly, with this difference only, that the evils have increased to the public in proportion to the increased number of females sent out from Europe. What I here state is from my own positive knowledge; there is no one in the colony so well acquainted with their vices and distresses as myself, as no one is called upon to visit them so much in the hour of their affliction. There is no magistrate in the settlement before whom they are so frequently brought on various accounts, nor any one to whom they so much appeal in the day of trouble. I am of opinion that no clergyman was ever placed in so painful and trying a situation, as far as relates to the moral and religious state of the people committed to my care. I see them devoted to vice and infamy and extreme wretchedness while living, and when they come to die, suffering all the horror of mind and anguish of spirit that guilt can possibly inspire, without the means of applying any remedy to relieve their sufferings in either case. There is another serious evil I wish to state to your Excellency, in consequence of the female convicts being at large in the night, to indulge their vicious habits and passions, namely, there is scarcely one female convict that will quietly go into the service of the most respectable family in the colony.

It generally happens when female convicts are ordered into the service of private individuals by the magistrate, that they will, in the most open and positive manner, refuse to obey his orders; and will sooner live upon bread and water in a solitary cell, than leave Paramatta, the scene of their sensual gratifications, till they weary out, by length of time, the patience of the magistrate, and he knows not what measures to adopt to support his judicial authority, and to carry his necessary orders into execution. Hence, instead of the government factory being a house of correction for the abandoned females, and a benefit to the colonists and other inhabitants as a check upon public vices, it becomes the grand source of all moral corruption, insubordination, and disease, and spreads its pestilential influence throughout the most remote parts of the colony. On this account there is not a bushel of wheat or

size in the farmer's barn, nor a sheep in his fold, nor a hog in his sty, nor even a potatoe, turnip, or cabbage in his garden, but what he is liable to be robbed of every night he lies down in his bed, either by his own or his neighbours' servants, to supply the want of these abandoned women, to whom the men can gain access all hours in the night, and nothing can prevent them while the women are at large.

The number of women employed in the factory under Mr. Oakes the superintendant, is one hundred and fifty,—they have seventy children. There is not any room in the factory that can be called a bed-room for these women and children. There are only two rooms, and they are both occupied as workshops, over the gaol, about eighty feet long and twenty wide. In these rooms there are forty-six women daily employed, twenty-four spinning wool upon the common wheel and twenty-two carding. There are also in them the warping machine, &c. belonging to the factory.

These rooms are crowded all the day, and at night such women sleep in them as are confined for recent offences, amongst the wheels, wool, and cards, and a few others who have no means whatever of procuring a better abode. The average number of women who sleep in the factory are about thirty in the whole.

Many of these women have little, and some no bedding—they all sleep on the floor. There is not a cradle or bedstead belonging to the factory. I do not deem it either safe or prudent that even thirty women should sleep in the factory, which has been crowded all the day with working people, could this be avoided, as the air must be bad and contagious.

Were the magistrate to compel even half the number of women and their children to sleep in the factory, which belong to it, they could not exist. Not less than one hundred and twenty women are at large in the night to sleep where they can. Many of them pay four shillings per week for their lodgings and fire; they have no means but theft and prostitution to obtain this sum, and these vices become so common



and habitual, that the women will tell the magistrate that they have no other means to supply their necessities.

I am of opinion that the sum paid by the male and female prisoners at Paramatta for their lodgings and fire, must exceed 1000*l.* per annum.

There are one hundred and fifty women and thirty-three men employed at the factory, under Mr. Oakes, and seventy-five under Mr. Rouse at the lumber-yard, as mechanics, &c. I have not included in this statement the constables, the convicts employed in his Majesty's Stores, nor the men and women servants at the General Hospital, who are equally unprovided for. No men can be more anxious and attentive for the good of the public service than Messrs. Rouse and Oakes,--they do all they can, and often feel it their duty to bring the convicts, under their directions, before the magistrates for not performing the task assigned to them. Though they prove to the satisfaction of the magistrate that the convicts have not executed the task of labour enjoined upon them, yet the magistrate in many cases is greatly perplexed how to administer impartial justice for the reasons already stated. He must either compel the convicts to make bricks without straw, or to exert his utmost ingenuity to compromise the difference between the superintendants and the convicts, in such a way, that the former may not lose all their authority, nor the latter be encouraged in their idleness, which is a very hard and difficult task. I might further notice, that many of the male and female convicts are much addicted to inebriety, and that the great number of licensed houses to sell spirituous liquors, considerably increases the number of crimes. Thirteen houses were licensed this year to sell spirits in Paramatta: I should consider that five at the utmost would be amply sufficient for the accommodation of the public; it would then be the interest of the publicans to keep regular houses, while at present it is the reverse.

I have now stated what I deem to be the real causes of so many public offences being committed in this district; and the extreme anxiety and fatigue brought upon the magistrate in consequence of them.

I now appeal to your Excellency whether, under such circumstances, any man of common feeling, possessed of the least spark of humanity or religion, who stood in the same official relation that I do to these people, as their spiritual pastor and magistrate, could enjoy one happy moment from the beginning to the end of the week ?

I humbly conceive that it is incompatible with the character and wish of the British nation, that her own exiles should be exposed to such privations and dangerous temptations, when she is daily feeding the hungry and clothing the naked, and receiving into her friendly, and I may add, pious bosom the stranger, whether savage or civilized of every nation under Heaven. There are in the whole under the two principal superintendants, Messrs. Rouse and Oakes, one hundred and eight men, and one hundred and fifty women, and several children ; and nearly the whole of them have to find lodgings for themselves when they have performed their government tasks.

I trust that your Excellency will be fully persuaded, that it is totally impossible for the magistrate to support his necessary authority, and to establish a regular police, under such a weight of accumulated and accumulating evils. I am as sensible as any one can be, that the difficulty of removing these evils will be very great ; at the same time, their number and influence may be greatly lessened, if the abandoned male and female convicts are lodged in barracks, and placed under the eye of the police, and the number of licensed houses is reduced : till something of this kind is done, all attempts of the magistrate, and the public administration of religion, will be attended with little benefit to the general good.

I have the honour to be

Your Excellency's most obedient humble servant,

SAMUEL MARSDEN.

## POSTSCRIPT.

I have not entered into any account of the manner in which the male convicts are sent to New South Wales, because I had, when I commenced writing this letter, been unable to obtain any precise information upon the subject. Recent events have, however, occurred, which it is impossible not to notice, though the particular details of them I shall resume for discussion elsewhere.

It pleased your Lordship to turn a deaf ear to all the solicitations for pardon, with which your office has been besieged in favour of Dr. Halloran. Unacquainted as I am with all the circumstances of his case, I do not chuse to give an opinion whether that mercy, which has been extended to confirmed thieves and regular offenders, might not, with propriety, have been shewn to a man of acquirements, with a large family of children, and who is 53 years of age. I never yet could understand the principle which guided your decision upon these subjects, and having witnessed many unnecessary executions, and some improper pardons, I am inclined to believe, that no rational rule is laid down. Thus it is idle to speculate upon the action of a principle, where perhaps none ever existed.

When you declined to recommend this unfortunate person to the Prince Regent, in order to obtain for him some alteration of his sentence, you promised that he should be well treated, and enjoy all the indulgence of which his situation admitted. Let us then see how this promise has been fulfilled. Dr. Halloran requested to be permitted to banish himself,—this indulgence was denied; he was moved from the hospital of Newgate to the hospital hulk at Woolwich. On Monday the 1st of December, though then suffering under a severe attack of illness, and not able to walk across the deck without support, he was put into an open boat, and carried ten miles down the river, and

deposited on board the Baring transport ; he was placed in the cabin, as it is termed, designed for the boys, in which he states he remained 19 hours without intercourse ;—he applied for food, when ten ounces of ship biscuit, ten ounces of flour, three ounces of raisins, and one ounce and a half of suet were brought him. Adjoining to this cabin, not more than 12 feet square, is the necessary used by the prisoners in the fore part of the ship, from which the effluvia are so suffocating and oppressive, as to have compelled him to keep the skuttle open all night for fresh air. I am informed you promised his friends that he should not be mingled with the felons. Yet, on the 6th of December, 20 *other persons*, 18 of them in double irons, were placed in the same cabin. These wretched beings sleep in cribs, each measuring 6 feet in breadth, by 5 feet and a half in length, and less than 3 feet in height. I make no comment on this English slave ship. I do not wish to do more than allude to the bodily torture suffered even in our cold climate from so close a quartering of human bodies, or the noisome pestilential air breathed during the night, or the effect of sea-sickness, or the thousand horrid scenes that may and do constantly arise during so long a sea voyage: *You are aware of the moral evils.* The Baring sailed from the Nore after the consequences of this mode of confining young persons had been detailed in all their disgusting enormity to your office. Think of an English clergyman, who has had the education of a gentleman, who has the feelings of a man, being exposed to the sight of such scenes. Is there an enormity that can be practised short of murder, that he does not daily and hourly witness ? I forbear to sully these pages with a picture of this prison of crime, which we are sending out to the Antipodes, taking due care during the whole voyage to debase and corrupt the miserable victims we are banishing from their country, so that vicious and bad as they leave England, they still, by this process of punishment, become worse before they arrive at the settlement of felons we have planted on the other side of the globe.

There sailed on board the Baring 300 convicts, they slept

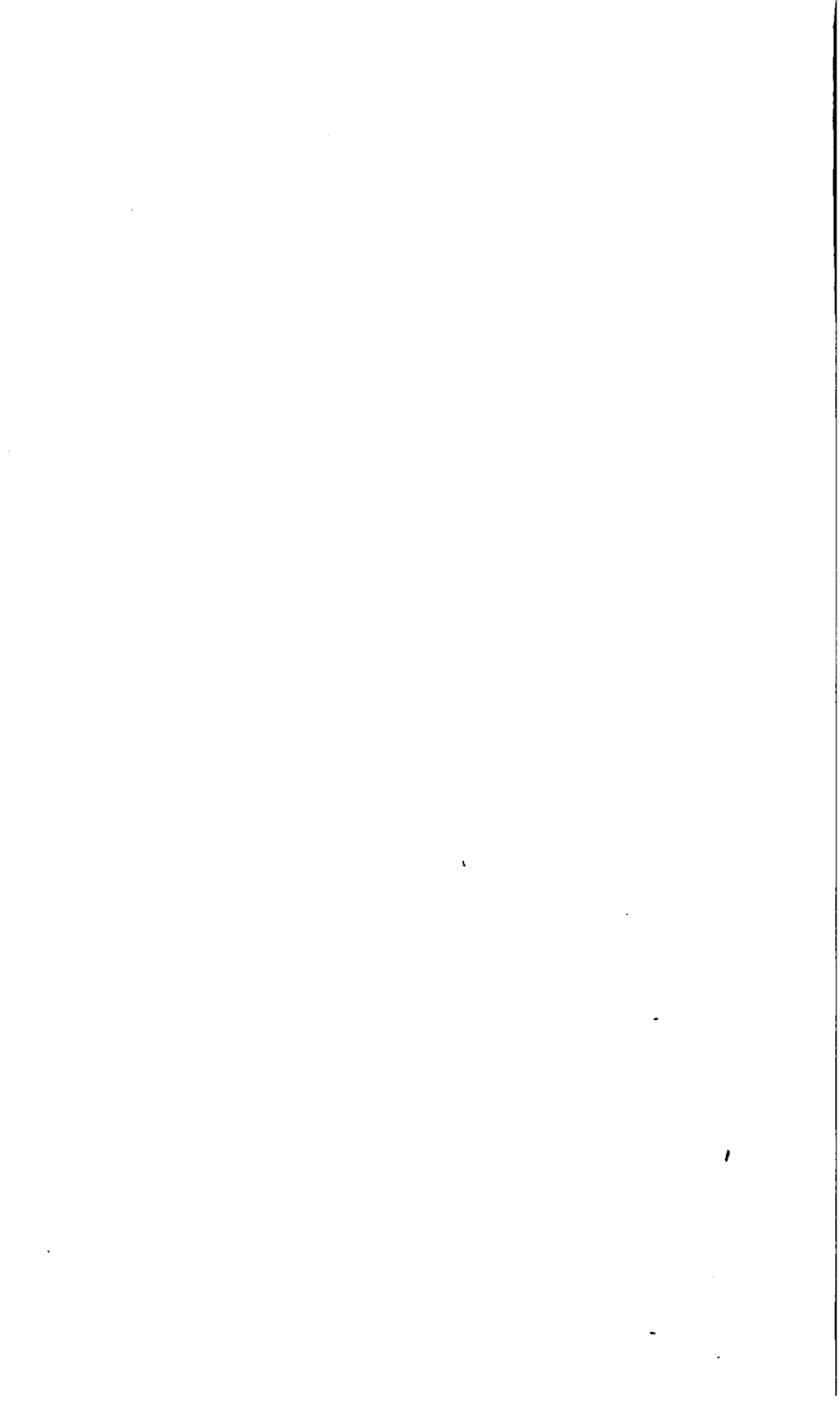
in the same species of crib, during the time they lay at the North. These miserable beings, crowded like sheep in a pen, were shut down at least fifteen hours out of the twenty-four. In this ship, including soldiers, sailors, and passengers, there were 447 persons when I inspected it on the 10th of this month, and never will the sights that I saw there be effaced from my recollection. Never, I believe, was so much misery crowded in so small a space. As I shall have other opportunities of proclaiming the enormity of the whole proceeding, at present I wish only to state that it is a legitimate result of our penal enactment, and is marked with the common character of contempt for human suffering, and an entire ignorance of the principles upon which rests the whole right of inflicting punishments. The legislature of England has gained great credit by its enactments to save our black brethren from the cupidity of English merchants, it surely will not neglect even our guilty countrymen, who are exposed to nearly the same perils, and suffer the same miseries.

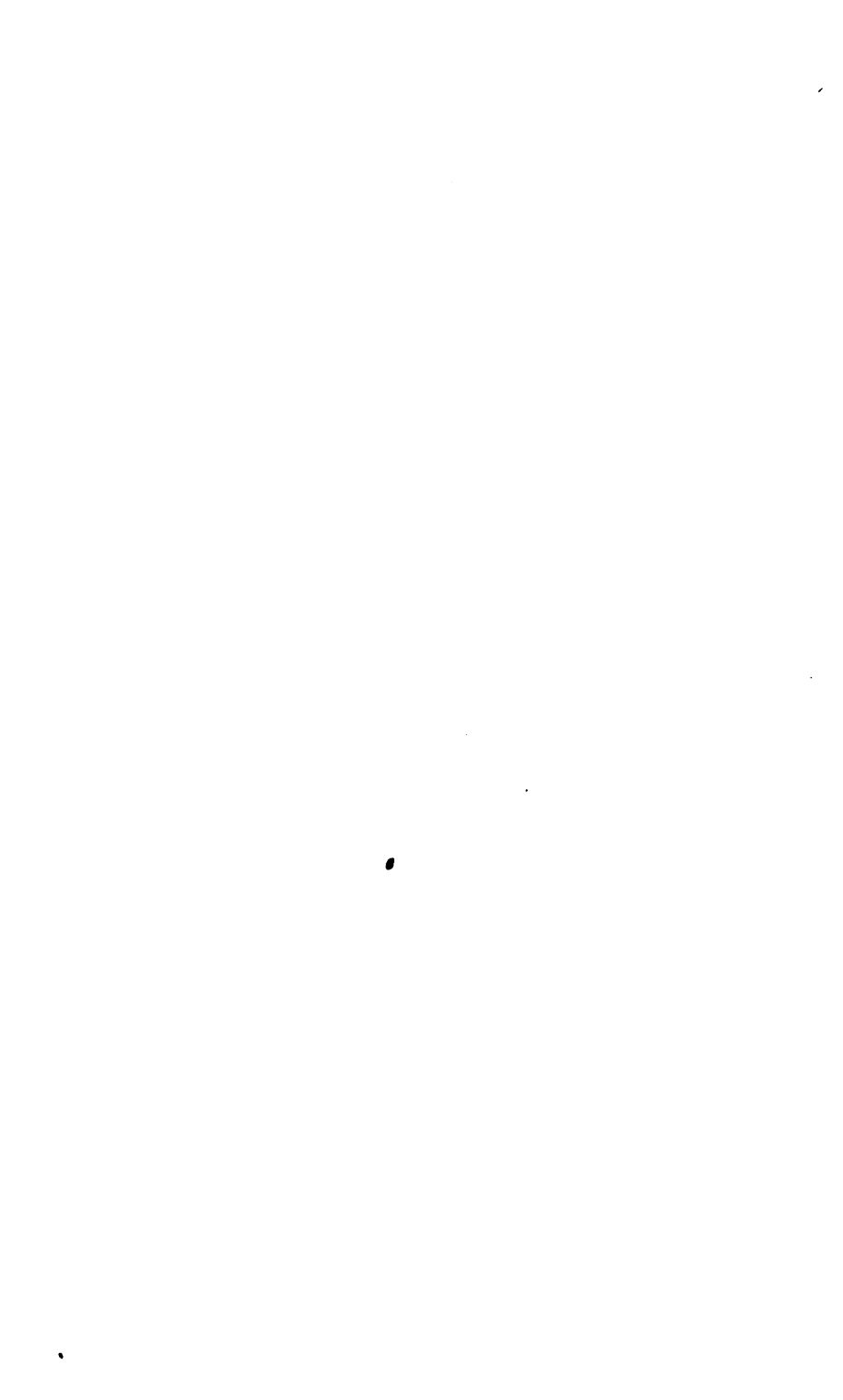
Your Lordship, from the part you took in the discussions on the slave trade, may not have feelings in common with those who rescued the Negro race from the merchants of England; but I appeal from the home office to the English people, and I rest assured that the Baring transport is the last ship that will ever sail from an English port, laden with a similar cargo, and stowed in such a manner.

*January 20th, 1818.*













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